UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1997/37
20 January 1997

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-third session
Item 9 (a) of the provisional agenda

FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION

ALTERNATIVE APPROACHES AND WAYS AND MEANS WITHIN THE UNITED NATIONS SYSTEM FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Second International Consultation on HIV/AIDS and Human Rights (Geneva, 23-25 September 1996)

Report of the Secretary-General

CONTENTS

		Paragraphs	Page
Introduction		1 - 9	2
I.	CONCLUSIONS OF THE CONSULTATION	10 - 12	3
II.	RECOMMENDATIONS FOR DISSEMINATION AND IMPLEMENTATION OF THE GUIDELINES ON HIV/AIDS AND HUMAN RIGHTS	13 - 32	6
	A. States	14 - 20	6
	B. United Nations system and regional intergovernmental bodies	21 - 29	7
	C. Non-governmental organizations	30 - 32	9

Annexes

I.	Guidelines on HIV/AIDS and Human Rights as adopted by the Second International Consultation on HIV/AIDS and Human Rights	11
II.	Agenda	56
III.	List of participants	57

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Introduction

1. The Commission on Human Rights, at its fifty-second session, in its resolution 1996/43 of 19 April 1996, requested the United Nations High Commissioner for Human Rights, inter alia, to continue his efforts, in cooperation with UNAIDS and non-governmental organizations, as well as groups of people living with HIV/AIDS, towards the elaboration of guidelines on promoting and protecting respect for human rights in the context of HIV/AIDS. In the same resolution, the Commission requested the Secretary-General to prepare for the consideration of the Commission at its fifty-third session a report on the above-mentioned guidelines, including the outcome of the second expert consultation on human rights and AIDS, and on their international dissemination.

2. The call for guidelines on human rights and HIV/AIDS was based on a recommendation contained in an earlier report of the Secretary-General to the Commission at its fifty-first session (E/CN.4/1995/45, para. 135), which stated that "the development of such guidelines or principles could provide an international framework for discussion of human rights considerations at the national, regional and international levels in order to arrive at a more comprehensive understanding of the complex relationship between the public health rationale and the human rights rationale of HIV/AIDS. In particular, Governments could benefit from guidelines that outline clearly how human rights standards apply in the area of HIV/AIDS and indicate concrete and specific measures, both in terms of legislation and practice, that should be undertaken".

3. In response to the above requests, the United Nations High Commissioner/Centre for Human Rights and the Joint United Nations Programme on HIV/AIDS (UNAIDS) convened the Second International Consultation on HIV/AIDS and Human Rights in Geneva, from 23 to 25 September 1996. It may be recalled that the first International Consultation on AIDS and Human Rights was organized by the United Nations Centre for Human Rights, in cooperation with the World Health Organization, in Geneva from 26 to 28 July 1989. In the report of the first consultation (HR/PUB/90/2), the elaboration of guidelines to assist policy-makers and others in compliance with international human rights standards regarding law, administrative practice and policy had already been proposed.

4. The Second International Consultation on HIV/AIDS and Human Rights brought together 35 experts in the field of AIDS and human rights, comprising government officials and staff of national AIDS programmes, people living with HIV/AIDS (PLHAs), human rights activists, academics, representatives of regional and national networks on ethics, law, human rights and HIV, and representatives of United Nations bodies and agencies, non-governmental organizations and AIDS service organizations (ASOs). The list of participants is contained in annex III to the present report.

5. The Executive Director of UNAIDS, Dr. Peter Piot, opened the Consultation and the United Nations High Commissioner for Human Rights, Mr. José Ayala-Lasso, made a closing statement. The Consultation elected by

acclamation Mr. Michael Kirby (Australia) as its Chairman and Mr. Babes Ignacio (Philippines) as its Rapporteur. The agenda of the Consultation is contained in annex II to the present report.

6. The Consultation had before it five background papers which had been commissioned for the purpose of eliciting specific regional and thematic experiences and concerns regarding HIV/AIDS and human rights, prepared by the following non-governmental organizations and networks of people living with HIV/AIDS: Alternative Law Research and Development Center (ALTERLAW) (Philippines); Network of African People Living with HIV/AIDS (NAP+) (Zambia); Colectivo Sol (Mexico); International Community of Women Living with HIV/AIDS (ICW+) (global) and Global Network of People Living with HIV/AIDS (GNP+) (global). The groups were asked, each within its specific context, to identify the most important human rights principles and concerns in the context of HIV/AIDS, as well as concrete measures that States could take to protect HIV-related human rights.

7. The Consultation also had before it draft guidelines on HIV/AIDS and human rights, prepared by Ms. Helen Watchirs (Australia) on the basis of the five regional background papers and other materials consulted. In addition, the international association Rights and Humanity conducted a global survey to review existing strategies and identify other measures necessary to ensure respect for human rights in the context of HIV/AIDS. An analysis of the 40 responses received to the survey was presented to the Consultation.

8. With regard to its methods of work, the Consultation formed four working groups to discuss and finalize the draft guidelines, focusing on the theoretical framework (WG.1), the institutional responsibilities and processes (WG.2), law review, reform and support services (WG.3) and on the promotion of a supportive and enabling environment (WG.4), respectively. The full text of the guidelines as adopted by the Consultation is contained in annex I to the present report. The Guidelines on HIV/AIDS and Human Rights will also be issued separately as a United Nations publication, in all official languages of the United Nations.

9. In the second part of the Consultation, participants were divided into a further three working groups in order to discuss and elaborate recommendations concerning strategies to ensure the dissemination and implementation of the guidelines, according to different actors, as follows: States (WG.6), United Nations system and regional intergovernmental bodies (WG.7) and non-governmental organizations (WG.8). The attention of the Commission is drawn to these recommendations, as outlined in chapter II below.

I. CONCLUSIONS OF THE CONSULTATION

10. HIV/AIDS continues to spread throughout the world at an alarming rate. Close in the wake of the epidemic is the widespread abuse of human rights and fundamental freedoms associated with HIV/AIDS in all parts of the world. In response to this situation the experts at the Second International Consultation on HIV/AIDS and Human Rights concluded the following:

(a) The protection of human rights is essential to safeguard human dignity in the context of HIV/AIDS and to ensure an effective, rights-based

response to HIV/AIDS. An effective response requires the implementation of all human rights, civil and political, economic, social and cultural, and fundamental freedoms of all people, in accordance with existing international human rights standards;

(b) Public health interests do not conflict with human rights. On the contrary, it has been recognized that when human rights are protected, less people become infected and those living with HIV/AIDS and their families can better cope with HIV/AIDS;

(c) A rights-based, effective response to the HIV/AIDS epidemic involves establishing appropriate governmental institutional responsibilities, implementing law reform and support services and promoting a supportive environment for groups vulnerable to HIV/AIDS and for those living with HIV/AIDS;

(d) In the context of HIV/AIDS, international human rights norms and pragmatic public health goals require States to consider measures that may be considered controversial, particularly regarding the status of women and children, sex workers, injecting drug users and men having sex with men. It is, however, the responsibility of all States to identify how they can best meet their human rights obligations and protect public health within their specific political, cultural and religious contexts;

(e) Although States have primary responsibility for implementing strategies that protect human rights and public health, United Nations bodies, agencies and programmes, regional intergovernmental bodies and non-governmental organizations, including networks of people living with HIV/AIDS, play critical roles in this regard.

11. The Consultation adopted Guidelines on HIV/AIDS and Human Rights, the purpose of which is to translate international human rights norms into practical observance in the context of HIV/AIDS. To this end, the Guidelines, as annexed to the present report, consist of two parts: first, the human rights principles underlying a positive response to HIV/AIDS and second, action-oriented measures to be employed by Governments in the areas of law, administrative policy and practice that will protect human rights and achieve HIV-related public health goals.

12. There are many steps that States can take to protect HIV-related human rights and to achieve public health goals. The 12 Guidelines elaborated by the Consultation for States to implement an effective, rights-based response are summarized below.

Guideline 1: States should establish an effective national framework for their response to HIV/AIDS which ensures a coordinated, participatory, transparent and accountable approach, integrating HIV/AIDS policy and programme responsibilities across all branches of Government.

Guideline 2: States should ensure, through political and financial support, that community consultation occurs in all phases of HIV/AIDS policy design,

programme implementation and evaluation and that community organizations are enabled to carry out their activities, including in the field of ethics, law and human rights, effectively.

Guideline 3: States should review and reform public health laws to ensure that they adequately address public health issues raised by HIV/AIDS, that their provisions applicable to casually transmitted diseases are not inappropriately applied to HIV/AIDS and that they are consistent with international human rights obligations.

Guideline 4: States should review and reform criminal laws and correctional systems to ensure that they are consistent with international human rights obligations and are not misused in the context of HIV/AIDS or targeted against vulnerable groups.

Guideline 5: States should enact or strengthen anti-discrimination and other protective laws that protect vulnerable groups, people living with HIV/AIDS and people with disabilities from discrimination in both the public and private sectors, ensure privacy and confidentiality and ethics in research involving human subjects, emphasize education and conciliation, and provide for speedy and effective administrative and civil remedies.

Guideline 6: States should enact legislation to provide for the regulation of HIV-related goods, services and information, so as to ensure widespread availability of qualitative prevention measures and services, adequate HIV prevention and care information and safe and effective medication at an affordable price.

Guideline 7: States should implement and support legal support services that will educate people affected by HIV/AIDS about their rights, provide free legal services to enforce those rights, develop expertise on HIV-related legal issues and utilize means of protection in addition to the courts, such as offices of ministries of justice, ombudspersons, health complaint units and human rights commissions.

Guideline 8: States, in collaboration with and through the community, should promote a supportive and enabling environment for women, children and other vulnerable groups by addressing underlying prejudices and inequalities through community dialogue, specially designed social and health services and support to community groups.

Guideline 9: States should promote the wide and ongoing distribution of creative education, training and media programmes explicitly designed to change attitudes of discrimination and stigmatization associated with HIV/AIDS to understanding and acceptance.

Guideline 10: States should ensure that government and private sectors develop codes of conduct regarding HIV/AIDS issues that translate human rights principles into codes of professional responsibility and practice, with accompanying mechanisms to implement and enforce these codes.

Guideline 11: States should ensure monitoring and enforcement mechanisms to guarantee the protection of HIV-related human rights, including those of people living with HIV/AIDS, their families and communities.

Guideline 12: States should cooperate through all relevant programmes and agencies of the United Nations system, including UNAIDS, to share knowledge and experience concerning HIV-related human rights issues and should ensure effective mechanisms to protect human rights in the context of HIV/AIDS at international level.

II. RECOMMENDATIONS FOR DISSEMINATION AND IMPLEMENTATION OF THE GUIDELINES ON HIV/AIDS AND HUMAN RIGHTS

13. At the Second International Consultation on HIV/AIDS and Human Rights, the participants considered strategies for dissemination and implementation of the Guidelines. It was considered that there are three groups of key actors who, jointly and separately, are critical to the implementation of the Guidelines, namely States, the United Nations system, regional intergovernmental organizations and non-governmental and community-based organizations. Set out below are recommendations for measures that these actors are encouraged to take in order to ensure that the Guidelines are widely disseminated and effectively implemented.

A. States

14. States, at the highest level of Government (head of State, Prime Minister and/or relevant ministers) should promulgate the Guidelines and ensure that the political weight of the Government is behind the dissemination and implementation of the Guidelines throughout all branches of the executive, legislature and judiciary.

15. States, at highest level of Government, should assign appropriate governmental bodies/staff with the responsibility to devise and implement a strategy for dissemination and implementation of the Guidelines and establish periodic monitoring of this strategy through, for example, reports to the Executive Office and public hearings. States should establish within the executive branch a staff member(s) responsible for this strategy.

16. States should disseminate the Guidelines, endorsed by the executive, to relevant national bodies, such as interministerial and parliamentary committees on HIV/AIDS and national AIDS programmes, as well as to provincial and local-level bodies.

17. States, through these bodies, should give formal consideration to the Guidelines in order to identify ways to build them into existing activities and prioritize necessary new activities and policy review. States should also organize consensus workshops with the participation of non-governmental organizations, community-based organizations and AIDS service

organizations (ASOs), networks of people living with HIV/AIDS (PLHAs), networks on ethics, law, human rights and HIV, United Nations Theme Groups on HIV/AIDS, as well as political and religious groups:

(a) To discuss the relevance of the Guidelines to the local situation, to identify obstacles and needs, to propose interventions and solutions and to achieve consensus for the adoption of the Guidelines;

(b) To elaborate national, provincial and local plans of action for implementation and monitoring of the Guidelines within the local context;

(c) To mobilize and ensure the commitment of relevant governmental officials to apply the Guidelines as a working tool to be integrated into their individual workplans.

18. States, at national, subnational and local levels, should establish mechanisms to receive, process and refer issues, claims and information in relation to the Guidelines and to the human rights issues raised therein. States should create focal points to monitor the implementation of the Guidelines in relevant government departments.

19. States, in ways consistent with judicial independence, should disseminate the Guidelines widely throughout the judicial system and use them in the development of jurisprudence, conduct of court cases involving HIV-related matters and HIV-related training/continuing education of judicial officers.

20. States should disseminate the Guidelines throughout the legislative branch of Government and particularly to parliamentary committees involved in the formulation of policy and legislation relevant to the issues raised in the Guidelines. Such committees should assess the Guidelines to identify priority areas for action and a longer-term strategy to ensure that relevant policy and law are in conformity with the Guidelines.

B. United Nations system and regional intergovernmental bodies

21. The United Nations Secretary-General should submit the Guidelines to the Commission on Human Rights as part of the report on the Second International Consultation on HIV/AIDS and Human Rights.

22. The Secretary-General should transmit the Guidelines to heads of State:

(a) Recommending that the document be distributed nationally through the appropriate channels;

(b) Offering, within the mandates of UNAIDS and the United Nations High Commissioner/Centre for Human Rights, technical cooperation in facilitating the implementation of the Guidelines;

(c) Requesting that compliance with the Guidelines be included in the national reports to existing human rights treaty bodies;

(d) Reminding Governments of the responsibility to uphold international human rights standards in promoting compliance with the Guidelines.

23. The Secretary-General should transmit the Guidelines to the heads of all relevant United Nations bodies and agencies, requesting that they be widely disseminated throughout the relevant programmes and activities of the bodies and agencies. The Secretary-General should request that all relevant United Nations bodies and agencies consider their activities and programmes on HIV/AIDS in the light of the provisions of the Guidelines and support the implementation of the Guidelines at the national level.

24. The Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities, as well as all human rights treaty bodies, should consider and discuss the Guidelines with a view to incorporating relevant aspects of the Guidelines within their respective mandates. Human rights treaty bodies, in particular, should integrate the Guidelines, as relevant, in their respective reporting guidelines, questions to States, and when developing resolutions and general comments on related subjects.

25. The Commission on Human Rights should appoint a special rapporteur on human rights and HIV/AIDS with the mandate, inter alia, to encourage and monitor implementation of the Guidelines by States, as well as their promotion by the United Nations system, including human rights bodies, where applicable.

26. The United Nations High Commissioner/Centre for Human Rights should ensure that the Guidelines are disseminated throughout the Centre and incorporated into the activities and programmes of the Centre, particularly those involving support to the United Nations human rights bodies, technical assistance and monitoring. This should be coordinated by a staff member with exclusive responsibility for the Guidelines. Similarly, the United Nations Division for the Advancement of Women should ensure the full integration of the Guidelines into the work of the Committee on the Elimination of Discrimination Against Women.

27. UNAIDS should transmit the Guidelines widely throughout the system - to co-sponsors of the UNAIDS Programme Coordinating Board, United Nations Theme Groups on HIV/AIDS, UNAIDS staff, including country programme advisers and focal points - and should ensure that the Guidelines become a framework for action for the work of the United Nations Theme Groups on HIV/AIDS and UNAIDS staff, including that Theme Groups use the Guidelines to assess the HIV-related human rights, legal and ethical situation in-country and to elaborate the best means to support implementation of the Guidelines at the country level.

28. Regional bodies (such as the Inter-American Commission on Human Rights, the Organization of American States, the African Commission on Human and Peoples' Rights, the Organization of African Unity, the European Commission on Human Rights, the European Commission, the Council of Europe, the Association of South-East Asian Nations, etc.) should receive the Guidelines and transmit

them widely among members and relevant divisions with a view to assessing how their activities might be made consistent with the Guidelines and promote their implementation.

29. Specialized agencies and other concerned bodies (such as the International Labour Organization, the International Organization for Migration, the Office of the United Nations High Commissioner for Refugees, the United Nations Research Institute for Social Development and the World Trade Organization) should receive the Guidelines and transmit them widely among members and throughout their programmes with a view to assessing how their activities can be made consistent with the Guidelines and promote their implementation.

C. Non-governmental organizations*

30. NGOs should implement the Guidelines within a broad framework of communication around HIV and human rights, including through the establishment of ongoing communication between the HIV/AIDS community and the human rights community by:

(a) Establishing contacts at the international, regional and local levels between networks of ASOs and people living with HIV/AIDS and human rights NGOs;

(b) Developing mechanism(s) for ongoing communication and dissemination and implementation of the Guidelines, such as a bulletin board and/or home page on the Internet allowing for input and exchange of information on human rights and HIV and database linkages between groups working on human rights and HIV;

(c) Networking with human rights NGOs at meetings of United Nations human rights bodies;

(d) Promoting discussion of the Guidelines in their newsletters and other publications, as well as through other media;

(e) Developing an action-oriented and accessible version(s) of the Guidelines;

(f) Developing a strategy and process for the dissemination of the Guidelines and seeking funding and technical cooperation with regard to the dissemination.

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* Including AIDS service organizations, community-based organizations, regional and national networks on ethics, law, human rights and HIV and networks of people living with HIV/AIDS. These networks comprise not only non-governmental and AIDS service organizations but also professionals (e.g. lawyers, health care workers, social workers), people living with HIV/AIDS, academics, research institutions and other concerned citizens. The networks are important voices for mobilizing change and protecting human rights.

31. Non-governmental organizations at the regional level should:

(a) Establish or use existing focal points to disseminate the Guidelines, with popularization and/or training;

(b) Establish a regional "technical group" to introduce the Guidelines to the region;

(c) Use the Guidelines as a tool for advocacy, interpretation, monitoring abuse and establishing best practice;

(d) Prepare regular reports on the implementation of the Guidelines to human rights bodies (human rights treaty bodies and United Nations extra-conventional fact-finding mechanisms, such as special rapporteurs and representatives, as well as regional commissions) and other relevant international agencies;

(e) Bring cases of HIV/AIDS-related discrimination and other violations of human rights in the context of HIV/AIDS to regional human rights judicial and quasi-judicial mechanisms.

32. NGOs at the national level, in order to advocate the Guidelines, should obtain consensus on their acceptance and establish a joint strategy with governmental and non-governmental partners as a baseline for monitoring the Guidelines, through the following means:

(a) Hold national NGO strategy meetings on the Guidelines that include human rights NGOs (including women's organizations and prisoners' rights organization), ASOs, community-based organizations, networks on ethics, law, human rights and HIV and networks of people living with HIV/AIDS;

(b) Hold meetings with national governmental human rights organisms;

(c) Hold meetings with national Government (relevant ministries), legislative and judiciary;

(d) Establish or use existing national focal points to gather information and develop systems of information exchange on HIV and human rights, including the Guidelines.

Annex I

GUIDELINES ON HIV/AIDS AND HUMAN RIGHTS

Preamble

This document contains guidelines adopted at the Second International Consultation on HIV/AIDS and Human Rights, held in Geneva from 23 to 25 September 1996, to assist States in creating a positive, rights-based response to HIV/AIDS that is effective in reducing the transmission and impact of HIV/AIDS and respectful of human rights and fundamental freedoms.

The elaboration of such guidelines was first considered by the 1989 International Consultation on AIDS and Human Rights, organized jointly by the United Nations Centre for Human Rights and the World Health Organization. 1/ The United Nations Commission on Human Rights and its Sub-Commission on Prevention of Discrimination and Protection of Minorities have repeatedly reiterated the need for guidelines. 2/ Increasingly, the international community has recognized the need for elaborating further how existing human rights principles apply in the context of HIV/AIDS and for providing examples of concrete activities to be undertaken by States to protect human rights and public health in the context of HIV/AIDS.

The purpose of these Guidelines is to translate international human rights norms into practical observance in the context of HIV/AIDS. To this end, the Guidelines consist of two parts: first, the human rights principles underlying a positive response to HIV/AIDS and second, action-oriented measures to be employed by Governments in the areas of law, administrative policy and practice that will protect human rights and achieve HIV-related public health goals.

The Guidelines recognize that States bring to the HIV/AIDS epidemic different economic, social and cultural values, traditions and practices - a diversity which should be celebrated as a rich resource for an effective response to HIV/AIDS. In order to benefit from this diversity, a process of participatory consultation and cooperation was undertaken in the drafting of the Guidelines, so that the Guidelines reflect the experience of people affected by the epidemic, address relevant needs and incorporate regional perspectives. Furthermore, the Guidelines reaffirm that diverse responses can and should be designed within the context of universally recognized international human rights standards.

It is intended that the principal users of the Guidelines will be States, in the persons of legislators and government policy-makers, including

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1/ Report of an International Consultation on AIDS and Human Rights, Geneva, 26 to 28 July 1989 (HR/PUB/90/2).

2/ For reports and resolutions on HIV/AIDS and human rights of the United Nations Commission on Human Rights and its Sub-Commission on Prevention of Discrimination and Protection of Minorities, see the appendix to the present annex.

officials involved in national AIDS programmes and relevant departments and ministries, such as health, foreign affairs, justice, interior, employment, welfare and education. Other users who will benefit from the Guidelines include intergovernmental organizations (IGOs), non-governmental organizations (NGOs), networks of persons living with HIV/AIDS (PLHAs), community-based organizations (CBOs), networks on ethics, law, human rights and HIV and AIDS service organizations (ASOs). The broadest possible audience of users of the Guidelines will maximize their impact and make their content a reality.

The Guidelines address many difficult and complex issues, some of which may or may not be relevant to the situation in a particular country. For these reasons, it is essential that the Guidelines are taken by critical actors at the national and community level and considered in a process of dialogue involving a broad spectrum of those most directly affected by the issues addressed in the Guidelines. Such a consultative process will enable Governments and communities to consider how the Guidelines are specifically relevant in their country, assess priority issues presented by the Guidelines and devise effective ways to implement the Guidelines in their respective contexts.

In implementing the Guidelines, it should be borne in mind that achieving international cooperation in solving problems of an economic, social, cultural or humanitarian character and promoting and encouraging respect for human rights and for fundamental freedoms for all, is one of the principal objectives of the United Nations. In this sense, international cooperation, including financial and technical support, is a duty of States in the context of the HIV/AIDS epidemic and industrialized countries are encouraged to act in a spirit of solidarity in assisting developing countries to meet the challenges of implementing the Guidelines.

I. INTERNATIONAL HUMAN RIGHTS OBLIGATIONS AND HIV/AIDS

Introduction: HIV/AIDS, human rights and public health

Several years of experience in addressing the HIV/AIDS epidemic have confirmed that the promotion and protection of human rights is an essential component in preventing transmission of HIV and reducing the impact of HIV/AIDS. The protection and promotion of human rights is necessary both to protect the inherent dignity of persons affected by HIV/AIDS and to achieve the public health goals of reducing vulnerability to HIV infection, lessening the adverse impact of HIV/AIDS on those affected and empowering individuals and communities to respond to HIV/AIDS.

In general, human rights and public health share the common objective to promote and to protect the rights and well-being of all individuals. From the human rights perspective, this can best be accomplished by promoting and protecting the rights and dignity of everyone, with special emphasis on those who are discriminated against or whose rights are otherwise interfered with. Similarly, public health objectives can best be accomplished by promoting health for all, with special emphasis on those who are vulnerable to threats to their physical, mental or social well-being. Thus, health and human rights

complement and mutually reinforce each other in any context. They also complement and mutually reinforce each other in the context of HIV/AIDS.

One aspect of the interdependence of human rights and public health is demonstrated by studies showing that HIV prevention and care programmes with coercive or punitive features result in reduced participation and increased alienation of those at risk of infection. 3/ In particular, people will not seek HIV-related counselling, testing, treatment and support if this would mean facing discrimination, lack of confidentiality and other negative consequences. Therefore, it is evident that coercive public health measures drive away the people most in need of such services and fail to achieve their public health goals of prevention through behavioural change, care and health support.

Another aspect of the linkage between the protection of human rights and effective HIV/AIDS programmes is apparent in the fact that the incidence or spread of HIV/AIDS is disproportionately high among some populations. Depending on the nature of the epidemic and the legal, social and economic conditions in each country, groups that may be disproportionately affected include women, children, those living in poverty, minorities, indigenous people, migrants, refugees and internally displaced persons, people with disabilities, prisoners, sex workers, men having sex with men and injecting drug users - that is to say groups who already suffer from a lack of human rights protection and from discrimination and/or are marginalized by their legal status. Lack of human rights protection disempowers these groups to avoid infection and to cope with HIV/AIDS, if affected by it. 4/

Furthermore, there is growing international consensus that a broadly based, inclusive response, involving people living with HIV/AIDS in all its aspects, is a main feature of successful HIV/AIDS programmes. Another essential component of comprehensive response is the facilitation and creation of a supportive legal and ethical environment which is protective of human rights. This requires measures to ensure that Governments, communities and individuals respect human rights and human dignity and act in a spirit of tolerance, compassion and solidarity.

One essential lesson learned in the HIV/AIDS epidemic is that universally recognized human rights standards should guide policy-makers in formulating the direction and content of HIV-related policy and form an integral part of all aspects of national and local responses to HIV/AIDS.

3/ J. Dwyer, "Legislating AIDS Away: The Limited Role of Legal Persuasion in Minimizing the Spread of HIV", in 9 Journal of Contemporary Health Law and Policy 167 (1993).

4/ For the purposes of these Guidelines, these groups will be referred to as "vulnerable" groups although it is recognized that the degree and source of vulnerability of these groups varies widely within countries and across regions.

A. Human rights standards and the nature of State obligations

The Vienna Declaration and Programme of Action, adopted at the World Conference on Human Rights in June 1993, 5/ affirmed that all human rights are universal, indivisible, interdependent and interrelated. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, States have the duty, regardless of their political, economic and cultural systems, to promote and protect all universally recognized human rights and fundamental freedoms, in accordance with international human rights standards.

A human rights approach to HIV/AIDS is, therefore, based on these State obligations with regard to human rights protection. HIV/AIDS demonstrates the indivisibility of human rights since the realization of economic, social and cultural rights, as well as civil and political rights, is essential to an effective response. Furthermore, a rights-based approach to HIV/AIDS is grounded in concepts of human dignity and equality which can be found in all cultures and traditions.

The key human rights principles which are essential to effective State responses to HIV/AIDS are to be found in existing international instruments, such as the Universal Declaration of Human Rights, the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of the Child. Regional instruments, including the American Convention on Human Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms and the African Charter on Human and Peoples' Rights also enshrine State obligations applicable to HIV/AIDS. In addition, a number of conventions and recommendations of the International Labour Organization are particularly relevant to the problem of HIV/AIDS, such as ILO instruments concerning discrimination in employment and occupation, termination of employment, protection of workers' privacy, and safety and health at work.

Among the human rights principles relevant to HIV/AIDS are, inter alia:

The right to non-discrimination, equal protection and equality before the law

The right to life

The right to the highest attainable standard of physical and mental health

The right to liberty and security of person

The right to freedom of movement

5/ A/CONF.157/24 (Part I), chap. III.

The right to seek and enjoy asylum

The right to privacy

The right to freedom of opinion and expression and the right to freely receive and impart information

The right to freedom of association

The right to work

The right to marry and found a family

The right to equal access to education

The right to an adequate standard of living

The right to social security, assistance and welfare

The right to share in scientific advancement and its benefits

The right to participate in public and cultural life

The right to be free from torture and cruel, inhuman or degrading treatment or punishment

The rights of women and children.

B. Restrictions and limitations

Under international human rights law, States may impose restrictions on some rights, under narrowly defined circumstances, if such restrictions are necessary to achieve overriding goods, such as public health, the rights of others, morality, public order, the general welfare in a democratic society and national security. Some rights are non-derogable and cannot be restricted under any circumstances. 6/ In order for restrictions on human rights to be legitimate, the State must establish that the restriction is:

(a) Provided for and carried out in accordance with the law, i.e. according to specific legislation which is accessible, clear and precise, so that it is reasonably foreseeable that individuals will regulate their conduct accordingly;

(b) Based on a legitimate interest, as defined in the provisions guaranteeing the rights;

6/ These include the right to life, freedom from torture, freedom from enslavement or servitude, protection from imprisonment for debt, freedom from retroactive penal laws, the right to recognition as a person before the law and the right to freedom of thought, conscience and religion.

(c) Proportional to that interest and constituting the least intrusive and least restrictive measure available and actually achieving that interest in a democratic society, i.e. established in a decision-making process consistent with the rule of law. 7/

Public health is most often cited by States as a basis for restricting human rights in the context of HIV/AIDS. Many such restrictions, however, infringe on the principle of non-discrimination, for example when HIV status is used as the basis for differential treatment with regard to access to education, employment, health care, travel, social security, housing and asylum. The right to privacy is known to have been restricted through mandatory testing and the publication of HIV status and the right to liberty of person is violated when HIV is used to justify deprivation of liberty or segregation. Although such measures may be effective in the case of diseases which are contagious by casual contact and susceptible to cure, they are ineffective with regard to HIV/AIDS since HIV is not casually transmitted. In addition, such coercive measures are not the least restrictive measures possible and are often imposed discriminatorily against already vulnerable groups. Finally, and as stated above, these coercive measures drive people away from prevention and care programmes, thereby limiting the effectiveness of public health outreach. A public health exception is, therefore, seldom a legitimate basis for restrictions on human rights in the context of HIV/AIDS.

C. The application of specific human rights in the context of the HIV/AIDS epidemic

Examples of the application of specific human rights to HIV/AIDS are illustrated below. These rights should not be considered in isolation but as interdependent rights supporting the Guidelines elaborated in this document. In the application of these rights, the significance of national and regional particularities and various historical, cultural and religious backgrounds must be remembered. It remains the duty of States, however, to promote and protect all human rights within their cultural contexts.

1. Non-discrimination and equality before the law

International human rights law guarantees the right to equal protection before the law and freedom from discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Discrimination on any of these grounds is not only wrong in itself but also creates and sustains conditions leading to societal vulnerability to infection by HIV, including lack of access to an enabling environment that will promote behavioural change and enable people to cope with HIV/AIDS. Groups suffering from discrimination, which also disables them in the context of HIV/AIDS, are women, children, those living in poverty, minorities, indigenous people, migrants, refugees and internally displaced persons, people with disabilities, prisoners, sex workers, men having sex with men and injecting drug users.

7/ P. Sieghart, AIDS and Human Rights: A UK Perspective, British Medical Association Foundation for AIDS, London, 1989, pp. 12-25.

Responses by States to the epidemic should include the implementation of laws and policies to eliminate systemic discrimination, including where it occurs against these groups.

The Commission on Human Rights has confirmed that "other status" in non-discrimination provisions is to be interpreted to include health status, including HIV/AIDS. 8/ This means that States should not discriminate against PLHAs or members of groups perceived to be at risk of infection on the basis of their actual or presumed HIV status. 9/

The Human Rights Committee has confirmed that the right to equal protection of the law prohibits discrimination in law or in practice in any fields regulated and protected by public authorities and that a difference in treatment is not necessarily discriminatory if it is based on reasonable and objective criteria. The prohibition against discrimination thus requires States to review and, if necessary, repeal or amend their laws, policies and practices to proscribe differential treatment which is based on arbitrary HIV-related criteria. 10/

2. Human rights of women

Discrimination against women, de facto and de jure, renders them disproportionately vulnerable to HIV/AIDS. Women's subordination in the family and in public life is one of the root causes of the rapidly increasing rate of infection among women. It also impairs women's ability to deal with the consequences of their own infection and/or infection in the family, in social, economic and personal terms. 11/

With regard to prevention of infection, the rights of women and girls to the highest attainable standard of physical and mental health, to education, to freedom of expression, to freely receive and impart information, should be applied to include equal access to HIV-related information, education, means

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8/ See, inter alia, Commission on Human Rights resolutions 1995/44 of 3 March 1995 and 1996/43 of 19 April 1996.

9/ Other groups singled out for discriminatory measures in the context of HIV/AIDS, such as mandatory screening, are the military, police, peace-keeping forces, pregnant women, hospital patients, tourists, performers, people with haemophilia, tuberculosis or sexually transmitted diseases (STDs), truck drivers and scholarship-holders. Their partners, families, friends and care providers may also be subject to discrimination based on presumed HIV status.

10/ Human Rights Committee, General Comment No. 18 (37). Official Records of the General Assembly, Forty-fifth Session, Supplement No. 40 (A/45/40), vol. I, annex VI A.

11/ See report of the Expert Group Meeting on Women and HIV/AIDS and the Role of National Machinery for the Advancement of Women, convened by the Division for the Advancement of Women, Vienna, 24-28 September 1990 (EGM/AIDS/1990/1).

of prevention and health services. However, even when such information and services are available, women and girls are often unable to negotiate safer sex or to avoid HIV-related consequences of the sexual practices of their husband or partners as a result of social and sexual subordination, economic dependence on a relationship and cultural attitudes. The protection of the sexual and reproductive rights of women and girls is, therefore, critical. This includes the rights of women to have control over and to decide freely and responsibly, free of coercion, discrimination and violence, on matters related to their sexuality, including sexual and reproductive health. 12/ Measures for the elimination of sexual violence and coercion against women in the family and in public life not only protect women from human rights violations but also from HIV infection that may result from such violations.

Furthermore, in order to empower women to leave relationships or employment which threaten them with HIV infection and to cope if they or their family members are infected with HIV/AIDS, States should ensure women's rights to, inter alia, legal capacity and equality within the family, in matters such as divorce, inheritance, child custody, property and employment rights, in particular, equal remuneration of men and women for work of equal value, equal access to responsible positions, measures to reduce conflicts between professional and family responsibilities and protection against sexual harassment at the workplace. Women should also be enabled to enjoy equal access to economic resources, including credit, an adequate standard of living, participation in public and political life and to benefits of scientific and technological progress so as to minimize risk of HIV infection.

HIV/AIDS prevention and care for women are often undermined by pervasive misconceptions about HIV transmission and epidemiology. There is a tendency to stigmatize women as "vectors of disease", irrespective of the source of infection. As a consequence, women who are or are perceived to be HIV-positive face violence and discrimination in public and in private life. Sex workers often face mandatory testing with no support for prevention activities to encourage or require their clients to wear condoms and with no access to health-care services. Many HIV/AIDS programmes targeting women are focused on pregnant women but these programmes often emphasize coercive measures directed towards the risk of transmitting HIV to the foetus, such as mandatory pre- and post-natal testing followed by coerced abortion or sterilization. Such programmes seldom empower women to prevent perinatal transmission by pre-natal prevention education and an available choice of health services and overlook the care needs of women.

The Convention on the Elimination of All Forms of Discrimination against Women obliges States parties to address all aspects of gender-based discrimination in law, policy and practice. States are also required to take appropriate measures to modify social and cultural patterns which are based on ideas of superiority/inferiority and stereotyped roles for men and women. The Committee on the Elimination of Discrimination against Women (CEDAW) which

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12/ Beijing Declaration and Platform for Action, Fourth World Conference on Women, Beijing, 4/5 September 1995, (A/CONF.177/20).

monitors the Convention has underscored the link between women's reproductive role, their subordinate social position and their increased vulnerability to HIV infection. 13/

3. Human rights of children

The rights of children are protected by all international human rights instruments and in particular under the Convention on the Rights of the Child, which establishes an international definition of the child as "every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier" (art. 1). The Convention reaffirms that children are entitled to many of the rights that protect adults (e.g. the rights to life, non-discrimination, integrity of the person, liberty and security, privacy, asylum, expression, association and assembly, education and health), in addition to particular rights for children established by the Convention.

Many of these rights are relevant to HIV/AIDS prevention, care and support for children, such as freedom from trafficking, prostitution, sexual exploitation and sexual abuse since sexual violence against children, among other things, increases their vulnerability to HIV/AIDS. The freedom to seek, receive and impart information and ideas of all kinds and the right to education provide children with the right to give and receive all HIV-related information they need to avoid infection and to cope with their status, if infected. The right to special protection and assistance if deprived of his or her family environment, including alternative care and protection in adoption, in particular protects children if they are orphaned by HIV/AIDS. The right of disabled children to a full and decent life and to special care and the rights to abolition of traditional practices which are prejudicial to the health of children, such as early marriage, female genital mutilation, denial of equal sustenance and inheritance for girls are also highly relevant in the context of HIV/AIDS. Under the Convention, the right to non-discrimination and privacy for children living with HIV/AIDS and finally the rights of children to be actors in their own development and to express opinions and have them taken into account in making decisions about their lives should empower children to be involved in the design and implementation of HIV-related programmes for children.

4. Right to marry and found a family and protection of the family

The right to marry and to found a family encompasses the right of "men and women of full age, without any limitation due to race, nationality or religion, ... to marry and found a family", to be "entitled to equal rights as to marriage, during marriage and at its dissolution" and to protection by society and the State of the family as "the natural and fundamental group unit of society". 14/ Therefore, it is clear that the right of people living with

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13/ CEDAW, General Recommendation No. 15 (ninth session, 1990). Official Records of the General Assembly, Forty-fifth Session, Supplement No. 38 (A/45/38), chap. IV.

14/ Article 16, Universal Declaration of Human Rights.

HIV/AIDS is infringed by mandatory pre-marital testing and/or the requirement of "AIDS-free certificates" as a precondition for the grant of marriage licences under State laws. 15/ Secondly, forced abortions or sterilization of women living with HIV violates the human right to found a family, as well the right to liberty and integrity of the person. Women should be provided with accurate information about the risk of perinatal transmission to support them in making voluntary, informed choices about reproduction. 16/ Thirdly, measures to ensure the equal rights of women within the family are necessary to enable women to negotiate safe sex with their husbands/partners or be able to leave the relationship if they cannot assert their rights (see also Human rights of women above). Finally, the recognition of the family as the fundamental unit of society is undermined by policies which have the effect of denying family unity. In the case of migrants, many States do not allow migrants to be accompanied by family members, and the resulting isolation can increase vulnerability to HIV infection. In the case of refugees, mandatory testing as a precondition of asylum can result in HIV-positive family members being denied asylum while the rest of the family is granted asylum.

5. Right to privacy

Article 17 of the International Covenant on Civil and Political Rights provides that "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks". The right to privacy encompasses obligations to respect physical privacy, including the obligation to seek informed consent to HIV testing and privacy of information, including the need to respect confidentiality of all information relating to a person's HIV status.

The individual's interest in his/her privacy is particularly compelling in the context of HIV/AIDS, firstly, because of the invasive character of a mandatory HIV test and, secondly, because of the stigma and discrimination attached to the loss of privacy and confidentiality if HIV status is disclosed. The community has an interest in maintaining privacy so that people will feel safe and comfortable in using public health measures, such as HIV/AIDS prevention and care services. The interest in public health does not justify mandatory HIV testing or registration, except in case of blood/organ/tissue donations where the human product, rather than the person,

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15/ People living with HIV/AIDS should be able to marry and engage in sexual relations whose nature does not impose a risk of infection to their partners. People living with HIV/AIDS, like all people who know or suspect that they are HIV-positive, have a responsibility, for example by practising abstinence or safer sex, not to expose others unknowingly to infection.

16/ The chance of a woman living with HIV giving birth to an HIV-positive baby is approximately 1 in 3. This rate may be significantly reduced if the woman is able to undergo pre- and post-natal treatment with anti-retrovirals. Since extremely difficult and complex ethical and personal decisions are involved, the choice to have a child should be left to the woman, with input from her partner, if possible.

is tested before use on another person. All information on HIV sero-status obtained during the testing of donated blood or tissue must also be kept strictly confidential.

The duty of States to protect the right to privacy, therefore, includes the obligation to guarantee that adequate safeguards are in place to ensure that no testing occurs without informed consent, that confidentiality is protected, particularly in health and social welfare settings, and that information on HIV status is not disclosed to third parties without the consent of the individual. In this context, States must also ensure that HIV-related personal information is protected in the reporting and compilation of epidemiological data and that individuals are protected from arbitrary interference with their privacy in the context of media investigation and reporting.

In those societies and cultures where traditions place greater emphasis on the community, patients may more readily authorize the sharing of confidential information with their family or community. In such circumstances, disclosure to the family or community may be for the benefit of the person concerned and such shared confidentiality may not breach the duty to maintain confidentiality.

The Human Rights Committee has found that the right to privacy under article 17 of the International Covenant on Civil and Political Rights is violated by laws which criminalize private homosexual acts between consenting adults. The Committee noted that "... the criminalization of homosexual practices cannot be considered a reasonable means or proportionate measure to achieve the aim of preventing the spread of HIV/AIDS ... by driving underground many of the people at risk of infection ... [it] would appear to run counter to the implementation of effective education programmes in respect of the HIV/AIDS prevention". 17/

The Committee also noted that the term "sex" in article 26 of the Covenant which prohibits discrimination on various grounds includes "sexual orientation". In many countries, there exist laws which render criminal particular sexual relationships or acts between consenting adults, such as adultery, fornication, oral sex and sodomy. Such criminalization not only interferes with the right to privacy but it also impedes HIV/AIDS education and prevention work.

6. Right to enjoy the benefits of scientific progress and its applications

The right to enjoy the benefits of scientific progress and its applications is important in the context of HIV/AIDS in view of the rapid and continuing advances regarding testing, treatment therapies and the development of a vaccine. More basic scientific advances which are relevant to HIV/AIDS

17/ Human Rights Committee, Communication No. 488/1991, Nicholas Toonan v. Australia (views adopted on 31 March 1994, fiftieth session). Official Records of the General Assembly, Forty-ninth Session, Supplement No. 40 (A/49/40), vol. II, annex IX EE, para. 8.5.

concern the safety of the blood supply from HIV infection and the use of universal precautions which prevent the transmission of HIV in various settings, including health care. In this connection, however, developing countries experience severe resource constraints which limit not only the availability of such scientific benefits but also the availability of basic pain prophylaxis and antibiotics for the treatment of HIV-related conditions. Furthermore, disadvantaged and/or marginalized groups within societies may have no or limited access to available HIV-related treatments or to participation in clinical and vaccine development trials. Of deep concern is the need to share equitably among States and among all groups within States basic drugs and treatment, as well as the more expensive and complicated treatment therapies, where possible.

7. Right to liberty of movement

The right to liberty of movement encompasses the rights of everyone lawfully within a territory of a State to liberty of movement within that State and the freedom to choose his/her residence, as well as the rights of nationals to enter and leave their own country. Similarly, an alien lawfully within a State can only be expelled by a legal decision with due process protections.

There is no public health rationale for restricting liberty of movement or choice of residence on the grounds of HIV status. According to current international health regulations, the only disease which requires a certificate for international travel is yellow fever. 18/ Therefore, any restrictions on these rights based on suspected or real HIV status alone, including HIV screening of international travellers, are discriminatory and cannot be justified by public health concerns.

Where States prohibit people living with HIV/AIDS from longer-term residency due to concerns about economic costs, States should not single out HIV/AIDS, as opposed to comparable conditions, for such treatment and should establish that such costs would indeed be incurred in the case of the individual alien seeking residency. In considering entry applications, humanitarian concerns, such as family reunification and the need for asylum, should outweigh economic considerations.

8. Right to seek and enjoy asylum

Everyone has the right to seek and enjoy in other countries asylum from persecution. Under the 1951 Convention relating to the Status of Refugees and under customary international law, States cannot, in accordance with the principle of non-refoulement, return a refugee to a country where she or he faces persecution. Thus, States may not return a refugee to persecution on the basis of his or her HIV status. Furthermore, where the treatment of people living with HIV/AIDS can be said to amount to persecution, it can provide a basis for qualifying for refugee status.

18/ WHO International Health Regulations (1969).

The United Nations High Commissioner for Refugees issued policy guidelines in March 1988 which state that refugees and asylum seekers should not be targeted for special measures regarding HIV infection and that there is no justification for screening being used to exclude HIV-positive individuals from being granted asylum. 19/

The Human Rights Committee has confirmed that the right to equal protection of the law prohibits discrimination in law or in practice in any fields regulated and protected by public authorities. 20/ These would include travel regulations, entry requirements, immigration and asylum procedures. Therefore, although there is no right of aliens to enter a foreign country or to be granted asylum in any particular country, discrimination on the grounds of HIV-status in the context of travel regulations, entry requirements, immigration and asylum procedures would violate the right to equality before the law.

9. Right to liberty and security of person

Article 9 of the International Covenant on Civil and Political Rights provides that "Everyone has the right to liberty and security of the person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are prescribed by law".

The right to liberty and security of the person should, therefore, never be arbitrarily interfered with based simply on HIV status by using measures such as quarantine, detention in special colonies, or isolation. There is no public health justification for such deprivation of liberty. Indeed, it has been shown that public health interests are served by integrating people living with HIV/AIDS within communities and benefiting from their participation in economic and public life.

In exceptional cases involving objective judgements concerning deliberate and dangerous behaviour, restrictions on liberty may be imposed. Such exceptional cases should be handled under ordinary provisions of public health, or criminal laws, with appropriate due process protection.

Compulsory HIV testing can constitute a deprivation of liberty and a violation of the right to security of person. This coercive measure is often utilized with regard to groups least able to protect themselves because they are within the ambit of government institutions or the criminal law, e.g. soldiers, prisoners, sex workers, injecting drug users and men who have sex with men. There is no public health justification for such compulsory HIV testing. Respect for the right to physical integrity requires that testing be voluntary and based on informed consent.

19/ UNHCR Health Policy on AIDS, 15 February 1988 (UNHCR/IDM).

20/ Human Rights Committee, General Comment No. 18(37) op. cit.

10. Right to education

Article 26 of the Universal Declaration of Human Rights states in part that "Everyone has the right to education. ... Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship ...". This right includes three broad components which apply in the context of HIV/AIDS. Firstly, both children and adults have the right to receive HIV-related education, particularly regarding prevention and care. Access to education concerning HIV/AIDS is an essential life-saving component of effective prevention and care programmes. It is the State's obligation to ensure, in every cultural and religious tradition, that appropriate means are found so that effective HIV/AIDS information is included in educational programmes inside and outside schools. The provision of education and information to children should not be considered to promote early sexual experimentation; rather, as studies indicate, it delays sexual activity. 21/

Secondly, States should ensure that both children and adults living with HIV/AIDS are not discriminatorily denied access to education, including access to schools, universities, scholarships and international education or subject to restrictions because of their HIV status. There is no public health rationale for such measures since there is no risk of transmitting HIV casually in educational settings. Thirdly, States should, through education, promote understanding, respect, tolerance and non-discrimination in relation to persons living with HIV/AIDS.

11. Freedom of expression and information

Article 19 of the International Covenant on Civil and Political Rights states in part that "Everyone shall have the right to hold opinions without interference. ... Everyone shall have the right to freedom of expression; this right shall include the freedom to seek, receive and impart information and ideas of all kinds ... ". This right, therefore, includes the right to seek, receive and impart HIV-related prevention and care information. Such educational material which may necessarily involve detailed information about transmission risks and may be targeted to groups engaging in illegal behaviour, such as injecting drug use and homosexual behaviour, where applicable, should not be wrongfully subject to censorship or obscenity laws or laws making those imparting the information liable for "aiding and abetting" criminal offences. States are obliged to ensure that appropriate and effective information on methods to prevent HIV transmission is developed and disseminated for use in different multicultural contexts and religious traditions. The media should be respectful of human rights and dignity, specifically the right to privacy, and use appropriate language when reporting on HIV/AIDS. Reporting on HIV/AIDS by media should be accurate, factual, sensitive, and should avoid stereotyping and stigmatization.

21/ M. Alexander, "Information and Education Laws", in Dr. Jayasuriya (ed.) HIV, Law, Ethics and Human Rights, UNDP, New Delhi, 1995, p. 54.

12. Freedom of assembly and association

Article 20 of the Universal Declaration of Human Rights provides that "Everyone has the right to freedom of peaceful assembly and association". This right has been frequently denied to non-governmental organizations working in the field of human rights, AIDS service organizations (ASOs) and community-based organizations (CBOs), with applications for registration being refused as a result of their perceived criticism of Governments or of the focus of some of their activities, e.g. sex work. In general, non-governmental organizations and their members involved in the field of human rights should enjoy the rights and freedoms recognized in human rights instruments and the protection of national law. In the context of HIV/AIDS, the freedom of assembly and association with others is essential to the formation of HIV-related advocacy, lobby and self-help groups to represent interests and meet the needs of various groups affected by HIV/AIDS, including PLHAs. Public health and an effective response to HIV/AIDS are undermined by obstructing interaction and dialogue with and among such groups, other social actors, civil society and Government.

Furthermore, persons living with HIV/AIDS should be protected against direct or indirect discrimination based on HIV status in their admission to organizations of employers or trade unions, continuation as members and participation in their activities, in conformity with ILO instruments on freedom of association and collective bargaining. At the same time, workers' and employers' organizations can be important factors in raising awareness on issues connected with HIV/AIDS and in dealing with its consequences in the workplace.

13. Right to participation in political and cultural life

Realization of the right to take part in the conduct of public affairs, 22/ as well as in cultural life, 23/ is essential to guarantee participation by those most affected by HIV/AIDS in the development and implementation of HIV-related policies and programmes. These human rights are reinforced by the principles of participatory democracy, which assumes the involvement of PLHAs and their families, women, children and groups vulnerable to HIV/AIDS in designing and implementing programmes that will be most effective by being tailored to the specific needs of these groups. It is essential that PLHAs remain fully integrated into political, economic, social and cultural aspects of community life.

People with HIV/AIDS have the right to their cultural identity and to various forms of creativity, both as a means of artistic expression and as a therapeutic activity. Increasing recognition has been given to the expression of creativity as a popular medium for imparting HIV/AIDS information, combating intolerance, and as a therapeutic form of solidarity.

22/ Article 25 of the International Covenant on Civil and Political Rights.

23/ Article 15 of the International Covenant on Economic, Social and Cultural Rights.

14. Right to the highest attainable standard of physical and mental health

The right to the highest attainable standard of physical and mental health comprises, inter alia, "the prevention, treatment and control of epidemic ... diseases" and "the creation of conditions which would assure to all medical service and medical attention in the event of sickness". 24/

In order to meet these obligations in the context of HIV/AIDS, States should ensure the provision of appropriate HIV-related information, education and support, including access to services for sexually transmitted diseases, to the means of prevention (such as condoms and clean injection equipment) and to voluntary and confidential testing with pre- and post-test counselling, in order to enable individuals to protect themselves and others from infection. States should also ensure a safe blood supply and implementation of "universal precautions" to prevent transmission in settings such as hospitals, doctors' offices, dental practices and acupuncture clinics, as well as informal settings, such as during home births.

States should also ensure access to adequate treatment and drugs, within the overall context of their public health policies, so that people living with HIV/AIDS can live as long and successfully as possible. PLHAs should also have access to clinical trials and should be free to choose amongst all available drugs and therapies, including alternative therapies. International support, from both the public and private sectors, for developing countries for increased access to health care and treatment, drugs and equipment is essential. In this context, States should ensure that neither expired drugs nor other invalid materials are supplied.

States may have to take special measures to ensure that all groups in society, particularly marginalized groups, have equal access to HIV-related prevention, care and treatment services. The human rights obligations of States to prevent discrimination and to assure medical service and medical attention in the event of sickness for everyone require States to ensure that no one is discriminated against in the health-care setting on the basis of their HIV status.

15. Right to an adequate standard of living and social security services

Article 25 of the Universal Declaration of Human Rights states that "Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control". Enjoyment of the right to an adequate standard of living is essential to reduce vulnerability to the

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24/ Article 12, International Covenant on Economic, Social and Cultural Rights.

risk and consequences of HIV infection. It is particularly relevant to meeting the needs of people living with HIV/AIDS, and/or their families, who have become impoverished by HIV/AIDS as a result of increased morbidity due to AIDS and/or discrimination which can result in unemployment, homelessness and poverty. If States introduce priority ranking for such services for resource allocation purposes, then PLHAs and persons with comparable conditions and disabilities should qualify for preferential treatment because of their dire circumstances.

States should take steps to ensure that people living with HIV/AIDS are not discriminatorily denied an adequate standard of living and/or social security and support services on the basis of their health status.

16. Right to work

"Everyone has the right to work ... [and] to just and favourable conditions of work". 25/ The right to work entails the right of every person to access to employment without any precondition except the necessary occupational qualifications. This right is violated when an applicant or employee is required to undergo mandatory testing for HIV and is refused employment or dismissed or refused access to employee benefits on the grounds of a positive result. States should ensure that persons with HIV/AIDS are allowed to work as long as they can carry out the functions of the job. Thereafter, as with any other illness, PLHAs should be provided with reasonable accommodation to be able to continue working as long as possible and, when no longer able to work, be given equal access to existing sickness and disability schemes. The applicant or employee should not be required to disclose his or her HIV status to the employer nor in connection with his or her access to workers' compensation, pension benefits and health insurance schemes. States' obligations to prevent all forms of discrimination in the workplace, including on the grounds of HIV/AIDS, should extend to the private sector.

As part of favourable conditions of work, all employees have the right to safe and healthy working conditions. "In the vast majority of occupations and occupational settings, work does not involve a risk of acquiring or transmitting HIV between workers, from worker to client, or from client to worker". 26/ However, where a possibility of transmission does exist in the workplace, such as in health-care settings, States should take measures to minimize the risk of transmission. In particular, workers in the health sector must be properly trained in universal precautions for the avoidance of transmission of infection and be supplied with the means to implement such procedures.

25/ Article 23, Universal Declaration of Human Rights.

26/ Consultation on AIDS and the Workplace (World Health Organization, in association with the International Labour Organization), Geneva, 1988, sect. II, Introduction.

17. Freedom from cruel, inhuman or degrading treatment or punishment

The right to freedom from cruel, inhuman or degrading treatment or punishment can arise in two situations in the context of HIV/AIDS, namely in the treatment of prisoners and in connection with violence against women.

Imprisonment is punishment by deprivation of liberty but should not result in the loss of human rights or dignity. In particular, the State, through prison authorities, owes a duty of care to prisoners, including the duty to protect the rights to life and to health of all persons in custody. Denial to prisoners of access to HIV-related information, education and means of prevention (bleach, condoms, clean injection equipment), voluntary testing and counselling, confidentiality and HIV-related health care and access to and voluntary participation in treatment trials, could constitute cruel, inhuman or degrading treatment or punishment. The duty of care also comprises a duty to combat prison rape and other forms of sexual victimization that may result, inter alia, in HIV transmission.

Thus, all prisoners engaging in dangerous behaviour, including in rape and sexual coercion, should be subject to discipline based on their behaviour, without reference to their HIV status. There is no public health or security justification for mandatory HIV testing of prisoners, nor for denying inmates living with HIV/AIDS access to all activities available to the rest of the prison population. Furthermore, the only justification for segregation of PLHAs from the prison population would be for the health of PLHAs themselves. Prisoners with terminal diseases, including AIDS, should be considered for early release and given proper treatment outside prison.

Violence against women in all its forms during peacetime and in conflict situations increases women's and children's vulnerability to HIV infection. Such violence constituting cruel, inhuman and degrading treatment, includes, inter alia, sexual violence, rape (marital and other) and other forms of coerced sex, as well as traditional practices affecting the health of women and children. States have an obligation to protect women and children from sexual violence in both public and private lives.

II. GUIDELINES FOR STATE ACTION

Set out below are recommended Guidelines for States to implement in order to promote and protect human rights in the context of HIV/AIDS. These Guidelines are firmly anchored within a framework of existing international human rights norms and are based on many years of experience in identifying those strategies that have proven successful in addressing HIV/AIDS. The normative principles together with practical strategies provide the evidence and ideas for States to reorient and redesign their policies and programmes to ensure respect for HIV-related rights and to be most effective in addressing the epidemic. States should provide political leadership and financial resources sufficient to implement these strategies.

The guidelines focus on activities by States in view of their obligations under international and regional human rights instruments. This

is not to deny, however, the responsibilities of other key actors, such as the private sector, including professional groups such as health-care workers, the media, and religious communities. These groups also have responsibilities not to engage in discrimination and to implement protective and ethical policies and practices.

A. Institutional responsibilities and processes

Guideline 1: National framework

States should establish an effective national framework for their response to HIV/AIDS which ensures a coordinated, participatory, transparent and accountable approach, integrating HIV/AIDS policy and programme responsibilities, across all branches of Government.

Depending upon existing institutions, the level of the epidemic and institutional cultures, as well as the need to avoid overlapping of responsibilities, the following responses should be considered:

(a) Formation of an interministerial committee to ensure integrated development and high-level coordination of individual ministerial national action plans and to monitor and implement the further HIV/AIDS strategies, as set out below. In federal systems, an intergovernmental committee should also be established with provincial/state, as well as national representation. Each ministry should ensure that HIV/AIDS and human rights are integrated into all its relevant plans and activities, including:

Education

Law and justice, including police and corrective services

Science and research

Employment and public service

Welfare, social security and housing

Immigration, indigenous populations, foreign affairs and development cooperation

Health

Treasury and finance

Defence, including armed services

(b) Ensuring that an informed and ongoing forum exists for briefing, policy discussion and law reform to deepen the level of understanding of the epidemic, in which all political viewpoints can participate at national and subnational levels, e.g. by establishing parliamentary or legislative committees with representation from major and minor political parties.

(c) Formation or strengthening of advisory bodies to advise Government on legal and ethical issues, such as a legal and ethical sub-committee of the interministerial committee. Representation should consist of professional (public, law and education, science, bio-medical and social), religious and community groups, employers' and workers' organizations, NGOs and ASOs, nominees/experts and people living with HIV/AIDS.

(d) Sensitization of the judicial branch of Government, in ways consistent with judicial independence, on the legal, ethical and human rights issues related to HIV/AIDS, including through judicial education and the development of judicial materials.

(e) Ongoing interaction of government branches with United Nations Theme Groups on HIV/AIDS and other concerned international and bilateral actors to ensure that governmental responses to the HIV/AIDS epidemic will continue to make the best use of assistance available from the international community. Such interaction should, inter alia, reinforce cooperation and assistance to areas related to HIV/AIDS and human rights.

Commentary on Guideline 1

To be effective, the response to HIV/AIDS must mobilize key actors throughout all branches of Government and include all policy areas, since only a combination of well-integrated and coordinated approaches can address the complexities of the epidemic. In all sectors, leadership must be developed and must demonstrate a dedication to HIV-related human rights. Governments should avoid unnecessary politicization of HIV/AIDS which diverts government energy and divides the community rather than engendering a sense of solidarity and consensus in dealing with the epidemic. Political commitment to dedicate adequate resources to respond to the epidemic within States is essential. Equally important is that these resources are channelled into productive and coordinated strategies. Roles and lines of responsibility within Government, including for human rights issues, should be clarified.

Most countries already have national AIDS committees. In some countries, there are also subnational committees. However, the persisting lack of coordination in government policy and the lack of specific attention to human rights issues relating to the HIV/AIDS epidemic suggest a need to consider possible additional structures or to strengthen and reorient those that exist to include legal and ethical issues. Several models of coordinating committees and multidisciplinary advisory groups exist. 27/

27/ A successful example of an interministerial coordinating committee is the National AIDS Prevention and Control Committee chaired by the Prime Minister in Thailand since 1991. Other models are the Federal Parliamentary Liaison Group in Australia, the National AIDS Coordinating Council in Western Samoa, the Philippine National AIDS Council and the National Commission on AIDS in the United States. Another noteworthy example is the National Anti-AIDS Committee established by the President of the Ukraine as a special State authority.

Similar coordination is essential within and between lower levels of Government. It is necessary to focus such coordination not only in creating specialized HIV/AIDS bodies, but also in securing a place for HIV/AIDS human rights issues in existing mainstream forums, such as regular gatherings of Ministers of, e.g. Health, Justice and Social Welfare. A multidisciplinary body with professional and community representation should exist to advise Government on legal and ethical issues. These bodies at the national level should also ensure coordination with UNAIDS, its co-sponsors and other international agencies (donors, bilateral donors and others) to reinforce cooperation and assistance to areas relating to HIV/AIDS and human rights.

Guideline 2: Supporting community partnership

States should ensure, through political and financial support, that community consultation occurs in all phases of HIV/AIDS policy design, programme implementation and evaluation and that community organizations are enabled to carry out their activities, including in the fields of ethics, law and human rights, effectively.

(a) Community representation should comprise PLHAs, CBOs, ASOs, human rights NGOs and representatives of vulnerable groups. 28/ Formal and regular mechanisms should be established to facilitate ongoing dialogue with and input from such community representatives into HIV-related government policies and programmes. This could be established through regular reporting by community representatives to the various government, parliamentary and judicial branches described in Guideline 1, joint workshops with community representatives on policy, planning and evaluation of State responses and through mechanisms for receiving written submissions from the community.

(b) Sufficient Government funding should be allocated in order to support, sustain and enhance community organizations in areas of core support, capacity-building and implementation of activities, including in areas concerning HIV-related ethics, human rights and law. Such activities might involve training seminars, workshops, networking, developing promotional and educational materials, advising clients of their human and legal rights, referring clients to relevant grievance bodies, collecting data on human rights issues and human rights advocacy.

Commentary on Guideline 2

Community partners have knowledge and experience that States need in order to fashion effective State responses. This is particularly the case with regard to human rights issues, as community representatives are either directly affected by human rights problems or work directly with those who are affected. States should, therefore, ensure that this knowledge and experience are included in the development of HIV/AIDS policy, programmes and evaluation by recognizing the importance of such contributions and creating structural means by which to obtain them.

28/ See section I, Introduction, for a listing of vulnerable groups.

The contribution of CBOs, NGOs, ASOs and PLHAs is an essential part of the overall national response to the epidemic, including in the areas of ethics, law and human rights. As community representatives do not necessarily possess organizational ability or skills for advocacy, lobbying and human rights work, this contribution should be enhanced by State funding for administrative support, capacity-building, human resource development and implementation of activities. Collection of complaint data by CBOs and NGOs is vital to inform Governments and the international community where the most serious HIV-related human rights problems are occurring and what effective action should be implemented in response. 29/

B. Law review, reform and support services

Guideline 3: Public health legislation

States should review and reform public health legislation to ensure that they adequately address the public health issues raised by HIV/AIDS, that their provisions applicable to casually transmitted diseases are not inappropriately applied to HIV/AIDS and that they are consistent with international human rights obligations.

Public health legislation should contain the following components:

(a) Public health law should fund and empower public health authorities to provide a comprehensive range of services for the prevention and treatment of HIV/AIDS, including relevant information and education, access to voluntary testing and counselling, STD and sexual and reproductive health services for men and women, condoms and drug treatment, services and clean injection materials, as well as adequate treatment for HIV/AIDS-related illnesses, including pain prophylaxis.

(b) Apart from surveillance testing and other unlinked testing done for epidemiological purposes, public health legislation should ensure that HIV testing of individuals should only be performed with the specific informed consent of that individual. Exceptions to voluntary testing would need specific judicial authorization, granted only after due evaluation of the important privacy and liberty considerations involved.

(c) In view of the serious nature of HIV testing and in order to maximize prevention and care, public health legislation should ensure, whenever possible, that pre- and post-test counselling is provided in all cases. With the introduction of home-testing, States should ensure quality control, maximize counselling and referral services for those who use such tests and establish legal and support services for those who are the victims of misuse of such tests by others.

(d) Public health legislation should ensure that people are not subjected to coercive measures such as isolation, detention or quarantine on the basis of their HIV status. Where the liberty of persons living with HIV

29/ See Guideline 11 below.

is restricted due to their illegal behaviour, due process protections (e.g. notice, rights of review/appeal, fixed rather than indeterminate periods of orders and rights of representation) should be guaranteed.

(e) Public health legislation should ensure that HIV and AIDS cases reported to public health authorities for epidemiological purposes are subject to strict rules of data protection and confidentiality.

(f) Public health legislation should ensure that information related to the HIV status of an individual is protected from unauthorized collection, use or disclosure in the health-care and other settings, and that the use of HIV-related information requires informed consent.

(g) Public health legislation should authorize, but not require, that health care professionals decide, on the basis of each individual case and ethical considerations, to inform their patients' sexual partners of the HIV status of their patient. Such a decision should only be made in accordance with the following criteria:

The HIV-positive person in question has been thoroughly counselled

Counselling of the HIV-positive person has failed to achieve appropriate behavioural changes

The HIV-positive person has refused to notify, or consent to the notification of his/her partner(s)

A real risk of HIV transmission to the partner(s) exists

The HIV-positive person is given reasonable advance notice

The identity of the HIV-positive person is concealed from the partner(s), if this is practically possible

Follow-up is provided to ensure support to those involved, as necessary.

(h) Public health legislation should ensure that the blood/tissue/organ supply is free of HIV and other blood-borne diseases.

(i) Public health law should require the implementation of universal infection control precautions in health-care and other setting involving exposure to blood and other bodily fluids. Persons working in these settings must be provided with the appropriate equipment and training to implement such precautions.

(j) Public health legislation should require that health-care workers undergo a minimum of ethics and/or human rights training in order to be licensed to practice and should encourage professional societies of health-care workers to develop and enforce codes of conduct based on human rights and ethics, including HIV-related issues such as confidentiality and the duty to provide treatment.

Guideline 4: Criminal laws and correctional systems

States should review and reform criminal laws and correctional systems to ensure that they are consistent with international human rights obligations and are not misused in the context of HIV/AIDS or targeted against vulnerable groups.

(a) Criminal and/or public health legislation should not include specific offences against the deliberate and intentional transmission of HIV but rather should apply general criminal offences to these exceptional cases. Such application should ensure that the elements of foreseeability, intent, causality and consent are clearly and legally established to support a guilty verdict and/or harsher penalties.

(b) Criminal law prohibiting sexual acts (including adultery, sodomy, fornication and commercial sexual encounters) between consenting adults in private should be reviewed, with the aim of repeal. In any event, they should not be allowed to impede provision of HIV/AIDS prevention and care services.

(c) With regard to adult sex work that involves no victimization, criminal law should be reviewed with the aim to decriminalize, then legally regulate occupational health and safety conditions to protect sex workers and their clients, including support for safe sex during sex work. Criminal law should not impede provision of HIV/AIDS prevention and care services to sex workers and their clients. Criminal law should ensure that children and adult sex workers who have been trafficked or otherwise coerced into sex work are protected from participation in the sex industry and are not prosecuted for such participation but rather are removed from sex work and provided with medical and psycho-social support services, including those related to HIV.

(d) Criminal law should not be an impediment to measures taken by States to reduce the risk of HIV transmission among injecting drug users and to provide HIV-related care and treatment for injecting drug users. Criminal law should be reviewed to consider:

The authorization or legalization and promotion of needle and syringe exchange programmes;

The repeal of laws criminalizing the possession, distribution and dispensing of needles and syringes.

(e) Prison authorities should take all necessary measures, including adequate staffing, effective surveillance and appropriate disciplinary measures, to protect prisoners from rape, sexual violence and coercion. Prison authorities should also provide prisoners (and prison staff, as appropriate), with access to HIV-related prevention information, education, voluntary testing and counselling, means of prevention (condoms, bleach and clean injection equipment), treatment and care and voluntary participation in HIV-related clinical trials, as well as should ensure confidentiality, and should prohibit mandatory testing, segregation and denial of access to prison facilities, privileges and release programmes for HIV positive prisoners. Compassionate early release of prisoners living with AIDS should be considered.

Guideline 5: Anti-discrimination and protective laws

States should enact or strengthen anti-discrimination and other protective laws that protect vulnerable groups, people living with HIV/AIDS and people with disabilities from discrimination in both the public and private sectors, that will ensure privacy and confidentiality and ethics in research involving human subjects, emphasize education and conciliation and provide for speedy and effective administrative and civil remedies.

(a) General anti-discrimination laws should be enacted or revised to cover people living with asymptomatic HIV infection, people living with AIDS and those merely suspected of HIV or AIDS. Such laws should also protect groups made more vulnerable to HIV/AIDS due to the discrimination they face. Disability laws should also be enacted or revised to include HIV/AIDS in their definition of disability. Such legislation should include the following:

The areas covered should be as broad as possible, including health care, social security, welfare benefits, employment, education, sport, accommodation, clubs, trade unions, qualifying bodies, access to transport and other services;

Direct and indirect discrimination should be covered, as should cases where HIV/AIDS is only one of several reasons for a discriminatory act, and prohibiting HIV/AIDS vilification should also be considered;

Independent, speedy and effective legal and/or administrative procedures for seeking redress, containing such features as fast-tracking for cases where the complainant is terminally ill, investigatory powers to address systemic cases of discrimination in policies and procedures, ability to bring cases under pseudonym and representative complaints, including the possibility of public interest organizations bringing cases on behalf of people living with HIV/AIDS;

Exemptions for superannuation and life insurance should only relate to reasonable actuarial data, so that HIV/AIDS is not treated differently from analogous medical conditions.

(b) Traditional and customary laws which affect the status and treatment of various groups of society should be reviewed in the light of anti-discrimination laws. If necessary, these should be reformed to promote and protect human rights, so that legal remedies are made available, if such laws are misused, and information, education and community mobilization campaigns are conducted to change these laws and attitudes associated with them.

(c) General confidentiality and privacy laws should be enacted. HIV-related information on individuals should be included within definitions of personal/medical data subject to protection and should prohibit the unauthorized use and/or publication of HIV-related information on individuals. Privacy legislation should enable an individual to see his or her own records and to request amendments to ensure that such information is accurate, relevant, complete and up-to-date. An independent agency should be established to redress breaches of confidentiality. Provision should be made

for professional bodies to discipline cases of breaches of confidentiality as professional misconduct under codes of conduct discussed below. 30/ Unreasonable invasion of privacy by the media could also be included as a component of professional codes governing journalists. People living with HIV/AIDS should be authorized to demand that their identity and privacy are protected in legal proceedings in which information on these matters will be raised.

(d) Laws, regulations and collective agreements should be enacted or reached so as to guarantee the following workplace rights:

A national policy on HIV/AIDS and the workplace agreed upon in a tripartite body

Freedom from HIV screening for employment, promotion, training or benefits

Confidentiality regarding all medical information, including HIV/AIDS status

Employment security for workers living with HIV until they are no longer able to work, including reasonable alternative working arrangements

Defined safe practices for first aid and adequately equipped first-aid kits

Protection for social security and other benefits for workers living with HIV, including life insurance, pension, health insurance, termination and death benefits

Adequate health care accessible in or near the workplace

Adequate supplies of condoms available free to workers at the workplace

Workers' participation in decision-making on workplace issues related to HIV/AIDS

Access to information and education programmes on HIV/AIDS, as well as to relevant counselling and appropriate referral

Protection from stigmatization and discrimination by colleagues, unions, employers and clients

Appropriate inclusion in workers' compensation legislation of the occupational transmission of HIV (e.g. needle stick injuries), addressing such matters as the long latency period of infection, testing, counselling and confidentiality.

30/ See Guideline 10 below.

(e) Protective laws governing the legal and ethical protection of human participation in research, including HIV-related research, should be enacted or strengthened in relation to:

Non-discriminatory selection of participants, e.g. women, children, minorities

Informed consent

Confidentiality of personal information

Equitable access to information and benefits emanating from research

Counselling, protection from discrimination, health and support services provided during and after participation

The establishment of local and/or national ethical review committees to ensure independent and ongoing ethical review, with participation by members of the community affected, of the research project

Approval for use of safe and efficacious pharmaceuticals, vaccines and medical devices.

(f) Anti-discrimination and protective laws should be enacted to reduce human rights violations against women in the context of HIV/AIDS, so as to reduce vulnerability of women to infection by HIV and to the impact of HIV/AIDS. In particular, laws should be reviewed and reformed to ensure equality of women regarding property and marital relations and access to employment and economic opportunity, so that discriminatory limitations are removed on rights to own and inherit property, enter into contracts and marriage, obtain credit and finance, initiate separation or divorce, equitably share assets upon divorce or separation, and retain custody of children. Laws should also be enacted to ensure women's reproductive and sexual rights, including right of independent access to reproductive and STD health information and services and means of birth control, including safe and legal abortion and the freedom to choose among these, the right to determine number and spacing of children, the right to demand safer sex practices and the right to legal protection from sexual violence, outside and inside marriage, including legal provisions for marital rape. The age of consent to sex and marriage should be consistent for males and females and the right of women and girls to refuse marriage and sexual relations should be protected by law. The HIV status of a parent or child should not be treated any differently from any other analogous medical condition in making decisions regarding custody, fostering or adoption.

(g) Anti-discrimination and protective laws should be enacted to reduce human rights violations against children in the context of HIV/AIDS, so as to reduce the vulnerability of children to infection by HIV and to the impact of HIV/AIDS. Such laws should provide for children's access to HIV-related information, education and means of prevention inside and outside school, govern children's access to voluntary testing with consent by the child or by the parent or appointed guardian, as appropriate, should protect children against mandatory testing, particularly if orphaned by HIV/AIDS, and

provide for other protections in the context of orphans, including inheritance and/or support. Such legislation should also protect children against sexual abuse, provide for their rehabilitation if abused and ensure that they are considered victims of wrongful behaviour, not subject to penalties themselves. Protection in the context of disability laws should also be ensured for children.

(h) Anti-discrimination and protective laws should be enacted to reduce human rights violations against men having sex with men, including in the context of HIV/AIDS, in order, inter alia, to reduce the vulnerability of men who have sex with men to infection by HIV and to the impact of HIV/AIDS. These measures should include providing penalties for vilification of people who engage in same-sex relationships, giving legal recognition to same-sex marriages and/or relationships and governing such relationships with consistent property, divorce and inheritance provisions. The age of consent to sex and marriage should be consistent for heterosexual and homosexual relationships. Laws and police practices relating to assaults against men who have sex with men should be reviewed to ensure that adequate legal protection is given in these situations.

(i) Laws and regulations that provide for restrictions on the movement or association of members of vulnerable groups 31/ in the context of HIV/AIDS should be removed in both law (decriminalized) and law enforcement.

(j) Public health, criminal and anti-discrimination legislation should prohibit mandatory HIV-testing of targeted groups, including vulnerable groups. 32/

Guideline 6: Regulation of goods, services and information

States should enact legislation to provide for the regulation of HIV-related goods, services and information, so as to ensure widespread availability of qualitative prevention measures and services, adequate HIV prevention and care information and safe and effective medication at an affordable price.

(a) Laws and/or regulations should be enacted to enable implementation of a policy of widespread provision of information about HIV/AIDS through the mass media. This information should be aimed at the general public, as well as at various vulnerable groups that may have difficulties in accessing such information. HIV/AIDS information should be effective for its designated audience and not be inappropriately subject to censorship or other broadcasting standards.

31/ See Section I, Introduction, for a listing of vulnerable groups.

32/ In addition to the vulnerable groups listed in section I, specific employment groups should also be protected from such targeted testing, e.g. truck drivers, sailors, hospitality/tourist industry workers and military.

(b) Law and/or regulations should be enacted to ensure the quality and availability of HIV tests and counselling. If home tests and/or rapid HIV test kits are permitted on the market, they should be strictly regulated to ensure quality and accuracy. The consequences of loss of epidemiological information, the lack of accompanying counselling and the risk of unauthorized uses, such as for employment or immigration, should also be addressed. Legal and social support services should be established to protect individuals from abuses arising from such testing.

(c) Legal quality control of condoms should be enforced and compliance with the International Condom Standard should be monitored in practice. Restrictions on the availability of preventive measures, such as condoms, bleach, clean needles and syringes, should be repealed and the provision of these through vending machines in appropriate locations should be considered, in the light of the increased accessibility and anonymity afforded to clients by this method of distribution.

(d) Duties, customs laws and value-added taxes should be revised so as to maximize access to safe and effective medication at an affordable price.

(e) Consumer protection laws or other relevant legislation should be enacted or strengthened to prevent fraudulent claims regarding the safety and efficacy of drugs, vaccines and medical devices, including those relating to HIV/AIDS.

Guideline 7: Legal support services

States should implement and support legal support services that will educate people affected by HIV/AIDS about their rights, provide free legal services to enforce those rights, develop expertise on HIV-related legal issues and utilize means of protection in addition to the courts, such as offices of Ministries of Justice, ombudspersons, health complaint units and human rights commissions.

States should consider the following features in establishing such services:

(a) State support for legal aid systems specializing in HIV/AIDS casework, possibly involving community legal aid centres and/or legal service services based in ASOs;

(b) State support or inducements (e.g. tax reduction) to private sector law firms to provide free pro bono services to PLHAs in areas such as anti-discrimination and disability, health care rights (informed consent and confidentiality), property (wills, inheritance) and employment law;

(c) State support for programmes to educate, raise awareness and build self-esteem among PLHAs concerning their rights and/or to empower them to draft and disseminate their own charters/declarations of legal and human rights; State support for production and dissemination of HIV/AIDS legal

rights brochures, resource personnel directories, handbooks, 33/ practice manuals, student texts, model curricula for law courses and continuing legal education, and newsletters to encourage information exchange and networking should also be provided. Such publications could report on case law, legislative reforms, national enforcement and monitoring systems for human rights abuses;

(d) State support for HIV legal services and protection through a variety of offices, such as Ministries of Justice, procurator and other legal offices, health complaint units, ombudspersons and human rights commissions.

Commentary on Guidelines 3 to 7

Since laws regulate conduct between the State and the individual and between individuals, they provide an essential framework for the observance of human rights, including HIV-related human rights. The efficacy of this framework for the protection of human rights depends on the strength of the legal system in a given society and on the access of its citizens to the system. However, many legal systems worldwide are not strong enough, nor do marginalized populations have access to them.

Nevertheless, the role of law in the response to HIV/AIDS may also be overemphasized and provide a vehicle for coercive and abusive policies. Although law may have an educative and normative role and may provide an important supportive framework for human rights protection and HIV/AIDS programmes, it cannot be relied upon as the only means by which to educate, change attitudes, achieve behavioural change or protect people's rights. Guidelines 3 to 7 above are, therefore, meant to encourage the enactment of meaningful and positive legislation, to describe the basic legal components necessary to provide support for the protection of HIV-related human rights and effective HIV prevention and care programmes and to be supplemented by all other Guidelines of this document.

Guidelines 3 to 6 encourage law and law reform which would bring national HIV-related laws into conformity with international and regional human rights standards. Although the content of the strategies primarily addresses formal law, law reform should also encompass traditional and customary laws. The process of HIV/AIDS law review and reform should be incorporated into the State's general activities regarding the observance of human rights norms and be integrated into the national AIDS response, whilst involving the affected communities, ensuring that existing legislation does not act as an impediment to HIV prevention and care programmes (for the general population, as well as for vulnerable groups) and protecting individuals against discrimination by both government actors and private individuals or institutions. It is recognized that some of the

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33/ See J. Godwin (et al), Australian HIV/AIDS Legal Guide, (2nd edition), Federation Press, Sydney, 1993; Lambda Legal Defense and Education Fund Inc., AIDS Legal Guide: A Professional Resource on AIDS-related Legal Issues and Discrimination, New York.

recommendations for law and law reform, particularly those concerning the status of women, drug use, sex work and the status of men having sex with men, might be controversial in particular national, cultural and religious contexts. However, these Guidelines are recommendations to States that are both based on existing international human rights standards and evolved and designed to achieve, in pragmatic ways, public health goals in relation to HIV/AIDS. It is the obligation of States to establish how they can best meet their international human rights obligations and protect the public health within their political, cultural and religious contexts. The United Nations High Commissioner/Centre for Human Rights, UNAIDS, its relevant co-sponsors and other United Nations bodies and agencies, such as the International Labour Organization, can offer Governments technical assistance in the process of law review and reform.

Guideline 7 urges that States (and the private sector) encourage and support specialist and generalist legal services to enable PLHAs and affected communities to enforce their human and legal rights through the use of such services. Information and research resources on legal and human rights issues should also be made available. Such services should also address the issue of reducing the vulnerability to infection and the impact of HIV/AIDS among vulnerable groups. The location and format of the information (e.g. plain and understandable language) provided via such services should render it accessible to members of these groups. Models exist in many countries. 34/

34/ Models include the Group for Life (Grupo Pela Vidda) in Rio de Janeiro, Brazil, which offers free legal services, brochures, bulletins, telephone hot-line and media campaigns. Legal rights brochures have been produced in the United Kingdom by the Terrence Higgins Trust and Immunity's Legal Centre (D. Taylor (ed.), HIV, You and the Law). Resource directories have been produced in the United States by the American Bar Association (Directory of Legal Resources for People with AIDS & HIV, AIDS Coordination Project, Washington D.C., 1991) and the Gay Men's Health Crisis (M. Holtzman, (ed.), Legal Services Referral Directory for People with AIDS, New York, 1991). Several other organizations in the United States have produced practitioners' or volunteers' training manuals, such as the Whitman-Walker Clinic (Washington, D.C.), AIDS Project (Los Angeles), the National Lawyers Guild, State AIDS Legal Services Organization (San Francisco) and the American Civil Liberties Union (William Rubenstein, Ruth Eisenberg and Lawrence Gostin, The Rights of Persons Living with HIV/AIDS (Southern Illinois Press, Carbondale, Illinois, 1996)). A manual for paralegals is being prepared in South Africa by the Pietermaritzburg branch of Lawyers for Human Rights with the assistance of the AIDS Law Project and with training coordination being provided by the AIDS Legal Network. Other resources include benchbooks for judges (A.R. Rubenfield, (ed.), AIDS Benchbook, National Judicial College, American Bar Association, Reno, Nevada, January 1991), the Southern Africa AIDS Information Dissemination Service and newsletters such as the Canadian HIV/AIDS Policy and Law Newsletter and Australia's Legal Link (see also AIDS/STD Health Promotion Exchange, Royal Tropical Institute, the Netherlands).

C. Promotion of a Supportive and Enabling Environment

Guideline 8: Women, children and other vulnerable groups 35/

States should, in collaboration with and through the community, promote a supportive and enabling environment for women, children and other vulnerable groups by addressing underlying prejudices and inequalities through community dialogue, specially designed social and health services and support to community groups.

(a) States should support the establishment and sustainability of community associations comprised of members of different vulnerable groups for peer education, empowerment, positive behaviour change and social support.

(b) States should support the development of adequate, accessible and effective HIV-related prevention and care education, information and services by and for vulnerable communities and should actively involve these communities in the design and implementation of these programmes.

(c) States should support the establishment of national and local forums to examine the impact of the HIV/AIDS epidemic on women. They should be multisectoral to include government, professional, religious and community representation and leadership and examine issues such as:

The role of women at home and in public life

The sexual and reproductive rights of women and men, including women's ability to negotiate safer sex and make reproductive choices

Strategies for increasing educational and economic opportunities for women

Sensitizing service deliverers and improving health care and social support services for women

The impact of religious and cultural traditions on women.

(d) States should implement the Cairo Programme of Action of the International Conference on Population and Development 36/ and the Beijing Declaration and Platform for Action of the Fourth World Conference on Women. In particular, primary health services, programmes and information campaigns should contain a gender perspective. Harmful traditional practices, including violence against women, sexual abuse, exploitation, early marriage and female genital mutilation, should be eliminated. Positive measures, including formal and informal education programmes, increased work opportunities and support services, should be established.

35/ See Section I, Introduction, for a listing of vulnerable groups.

36/ A/CONF.171/13, chap. I, resolution 1, annex.

(e) States should support women's organizations to incorporate HIV/AIDS and human rights issues into their programming.

(f) States should ensure that all women and girls of child-bearing age have access to accurate and comprehensive information and counselling about the prevention of HIV transmission and the risk of vertical transmission of HIV, as well as access to the available resources to minimize that risk, or to proceed with childbirth, if they so choose.

(g) States should ensure the access of children and adolescents to adequate health information and education, including information related to HIV/AIDS prevention and care, inside and outside school, which is tailored appropriately to age level and capacity and enables them to deal positively and responsibly with their sexuality. Such information should take into account the rights of the child to access to information, privacy, confidentiality, respect and informed consent and means of prevention, as well as the responsibilities, rights and duties of parents. Efforts to educate children about their rights should include the rights of persons, including children, living with HIV/AIDS.

(h) States should ensure that children and adolescents have adequate access to confidential sexual and reproductive health services, including HIV/AIDS information, counselling, testing and prevention measures such as condoms, and to social support services if affected by HIV/AIDS. The provision of these services to children/adolescents should reflect the appropriate balance between the rights of the child/adolescent to be involved in decision-making according to his or her evolving capabilities and the rights and duties of parents/guardians for the health and well-being of the child.

(i) States should ensure that child care agencies, including adoption and foster care homes, are trained with regard to HIV-related children's issues in order to be able to take into account the special needs of HIV-affected children and protect them from mandatory testing, discrimination and abandonment.

(j) States should support the implementation of specially designed and targeted HIV prevention and care programmes for those who have less access to mainstream programmes due to language, poverty, social or legal or physical marginalization, e.g. minorities, migrants, indigenous peoples, refugees and internally displaced persons, people with disabilities, prisoners, sex workers, men having sex with men and injecting drug users.

Commentary on Guideline 8

States should take measures to reduce the vulnerability, stigmatization and discrimination that surround HIV/AIDS and promote a supportive and enabling environment by addressing underlying prejudices and inequalities within societies and a social environment conducive to positive behaviour change. An essential part of this enabling environment involves the empowerment of women, youth and other vulnerable groups to deal with HIV/AIDS by taking measures to improve their social and legal status, involving them in

the design and implementation of programmes and assisting them to mobilize their communities. The vulnerability of some groups is due to their limited access to resources, information, education and lack of autonomy. Special programmes and measures should be designed to increase access. In many countries, community-based organizations and NGOs have already begun the process of creating a supportive and enabling environment in their response to the HIV epidemic. Governments must recognize these efforts and lend moral, legal, financial and political support to strengthen them.

Guideline 9: Changing discriminatory attitudes through education, training and the media

States should promote the wide and ongoing distribution of creative education, training and media programmes explicitly designed to change attitudes of discrimination and stigmatization associated with HIV/AIDS to understanding and acceptance.

(a) States should support appropriate entities, such as media groups, NGOs and networks of PLHAs, to devise and distribute programming to promote respect for the rights and dignity of PLHAs and members of vulnerable groups, using a broad range of media (film, theatre, television, radio, print, dramatic presentations, personal testimonies, Internet, pictures, bus posters). Such programming should not compound stereotypes about these groups but instead dispel myths and assumptions about them by depicting them as friends, relatives, colleagues, neighbours and partners. Reassurance concerning the modes of transmission of the virus and the safety of everyday social contact should be reinforced.

(b) States should encourage educational institutions (primary and secondary schools, universities and other technical or tertiary colleges, adult and continuing education), as well as trade unions and workplaces to include HIV/AIDS and human rights/non-discrimination issues in relevant curricula, such as human relationships, citizenship/social studies, legal studies, health care, law enforcement, family life and/or sex education, and welfare/counselling courses.

(c) States should support HIV-related human rights/ethics training/workshops for government officials, police, prison staff, politicians, as well as village, community and religious leaders and professionals.

(d) States should encourage the media and advertising industries to be sensitive to HIV/AIDS and human rights issues and to reduce sensationalism in reporting and inappropriate use of stereotypes, especially in relation to disadvantaged and vulnerable groups. Included in such training should be the production of useful resources, such as handbooks containing appropriate terminology, to eliminate use of stigmatizing language and a professional code of behaviour to ensure respect for confidentiality and privacy.

(e) States should support targeted training, peer education and information exchange for PLHA staff and volunteers of CBOs and ASOs and leaders of vulnerable groups to raise their awareness of human rights and the

means to enforce them. Conversely, education and training should be provided on HIV-specific human rights issues to those working on other human rights issues.

(f) States should support the use of alternative efforts such as radio programmes or facilitated group discussions to overcome access problems for individuals located in remote or rural areas, are illiterate, homeless or marginalized, without access to television, films and videos, and specific ethnic minority languages.

Commentary on Guideline 9

The use of formal standards and their implementation through government process and law alone cannot change negative attitudes and prejudices surrounding HIV/AIDS into respect for human rights. Public programming explicitly designed to reduce stigma has been shown to help create a supportive environment which is more tolerant and understanding. 37/ The reach of such programming should be a mixture of general and focused programmes using various media, including creative and dramatic presentations, compelling ongoing information campaigns for tolerance and inclusion and interactive educational workshops and seminars. The aim should be to challenge ignorant beliefs, prejudices and punitive attitudes by appealing to human compassion and identification with visible individuals. Programming based on fear can be counter-productive by engendering discrimination through panic.

Guideline 10: Development of public and private sector standards and mechanisms for implementing these standards

States should ensure that Government and the private sector develop codes of conduct regarding HIV/AIDS issues that translate human rights principles into codes of professional responsibility and practice, with accompanying mechanisms to implement and enforce these codes.

(a) States should require or encourage professional groups, particularly health care professionals, and other private sector industries (e.g. law, insurance) to develop and enforce their own codes of conduct addressing human rights issues in the context of HIV/AIDS. Relevant issues would include confidentiality informed consent to testing, the duty to treat, the duty to ensure safe workplaces, reducing vulnerability and discrimination and practical remedies for breaches/misconduct.

(b) States should require individual government portfolios to articulate how HIV-related human rights standards are met in their own policies and practices, as well as in formal legislation and regulations, at all levels of service delivery. Coordination of these standards should

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37/ Professor R. Feachem, Valuing the Past, Investing in the Future: Evaluation of the National HIV/AIDS Strategy 1993-4 to 1995-6, Commonwealth Department of Human Services and Health, September 1995, Canberra, pp. 190-192.

occur in the national framework described in Guideline 1 and be publicly available, after involvement of community and professional groups in the process.

(c) States should develop or promote multisectoral mechanisms to ensure accountability. This involves the equal participation of all concerned (i.e. government agencies, industry representatives, professional associations, NGOs, consumers, service providers and service users). The common goal should be to raise standards of service, strengthen linkages and communication and assure the free flow of information.

Commentary on Guideline 10

The development of standards in and by the public and private sectors is important. First, they translate human rights principles into practice from an insider's perspective and reflect more closely the community's concerns. Secondly, they are likely to be more pragmatic and acceptable to the sector involved. Thirdly, they are more likely to be "owned" and implemented if developed by the sector itself. Finally, they might have a more immediate impact than legislation.

Guideline 11: State monitoring and enforcement of human rights

States should ensure monitoring and enforcement mechanisms to guarantee HIV-related human rights, including those of people living with HIV/AIDS, their families and communities.

(a) States should collect information on human rights and HIV/AIDS and, using this information as a basis for policy and programme development and reform, report on HIV-related human rights issues to the relevant United Nations treaty bodies as part of their reporting obligations under human rights treaties.

(b) States should establish HIV/AIDS focal points in relevant government branches, including national AIDS programmes, police and correctional departments, the judiciary, government health and social service providers and the military, for monitoring HIV-related human rights abuses and facilitating access to these branches for disadvantaged and vulnerable groups. Performance indicators or benchmarks showing specific compliance with human rights standards should be developed for relevant policies and programmes.

(c) States should provide political, material and human resources support to ASOs and CBOs for capacity-building in human rights standards development and monitoring. States should provide human rights NGOs with support for capacity-building in HIV-related human rights standards and monitoring.

(d) States should support the creation of independent national institutions for the promotion and protection of human rights, including HIV-related rights, such as human rights commissions and ombudspersons, and/or appoint HIV/AIDS ombudspersons to existing or independent human rights agencies, national legal bodies and law reform commissions.

(e) States should promote HIV-related human rights in international forums and ensure that they are integrated into the policies and programmes of international organizations, including in United Nations human rights bodies, as well as in other agencies of the United Nations system. Furthermore, States should provide intergovernmental organizations with the material and human resources required to work effectively in this field.

Commentary on Guideline 11

Standard-setting and promotion of HIV-related human rights standards alone are not enough to address human rights abuses in the context of HIV/AIDS. Effective mechanisms must be established at the national and community levels to monitor and enforce HIV-related human rights. Governments should see this as part of their national responsibility to address HIV/AIDS. The existence of monitoring mechanisms should be publicized, particularly among PLHA networks, in order to maximize their use and impact. Monitoring is necessary to collect information, formulate and revise policy, and establish priorities for change and benchmarks for performance measurement. Monitoring should be both positive and negative, i.e. reporting on good practice to provide models for others to emulate, as well as identifying abuses. The non-governmental sector can provide an important means of monitoring human rights abuses, if resourced to do so, since it frequently has closer contact with the affected communities. Formal grievance bodies may be too bureaucratic and their procedures too time-consuming and stressful to attract a representative sample of complaints. Training is necessary for community participants to develop skills so as to be able to analyse and report findings at a level of quality which is credible for States and international human rights bodies.

Guideline 12: International cooperation

States should cooperate through all relevant programmes and agencies of the United Nations system, including UNAIDS, to share knowledge and experience concerning HIV-related human rights issues, and should ensure effective mechanisms to protect human rights in the context of HIV/AIDS at the international level.

(a) The Commission on Human Rights should take note of the present Guidelines and of the report on the Second International Consultation on HIV/AIDS and Human Rights and request States to carefully consider and implement the Guidelines in their national, subnational and local responses to HIV/AIDS and human rights.

(b) The Commission on Human Rights should request human rights treaty bodies, special rapporteurs and representatives and its working groups to take note of the Guidelines and include in their activities and reports all issues arising under the Guidelines relevant to their mandates.

(c) The Commission on Human Rights should request UNAIDS, its co-sponsors (UNDP, UNESCO, UNFPA, UNICEF, WHO and the World Bank) and other relevant United Nations bodies and agencies to integrate the promotion of the Guidelines throughout their activities.

(d) The Commission on Human Rights should appoint a special rapporteur on human rights and HIV/AIDS with the mandate, inter alia, to encourage and monitor implementation of the Guidelines by States, as well as their promotion by the United Nations system, including human rights bodies, where applicable.

(e) The Commission on Human Rights should encourage the United Nations High Commissioner/Centre for Human Rights to ensure that the Guidelines are disseminated throughout his Office and the Centre and are incorporated into all its human rights activities and programmes, particularly those involving technical cooperation, monitoring and support to human rights bodies and organs.

(f) States, in the framework of their periodic reporting obligations to United Nations treaty monitoring bodies and under regional conventions, should report on their implementation of the Guidelines and other relevant HIV/AIDS-related human rights concerns arising under the various treaties.

(g) States should ensure, at the country level, that their cooperation with UNAIDS Theme Groups includes promotion and implementation of the Guidelines, including the mobilization of sufficient political and financial support for such implementation.

(h) States should work in collaboration with UNAIDS, the United Nations High Commissioner/Centre for Human Rights and non-governmental and other organizations working in the field of human rights and HIV/AIDS to:

Support translation of the Guidelines into national and minority languages

Create a widely accessible mechanism for communication and coordination for sharing information on the Guidelines and HIV-related human rights

Support the development of a resource directory on international declarations/treaties, as well as policy statements and reports on HIV/AIDS and human rights, to strengthen support for the implementation of the Guidelines

Support multicultural education and advocacy projects on HIV/AIDS and human rights, including educating human rights groups on HIV/AIDS and educating HIV/AIDS and vulnerable groups on human rights issues, and strategies for monitoring and protecting human rights in the context of HIV/AIDS, using the Guidelines as an educational tool

Support the creation of a mechanism to allow existing human rights organizations and HIV/AIDS organizations to work together strategically to promote and protect the human rights of people living with HIV/AIDS and those vulnerable to infection, including through implementation of the Guidelines

Support the creation of a mechanism to monitor and publicize human rights abuses in the context of HIV/AIDS

Support the development of a mechanism to mobilize grass-roots responses to HIV-related human rights and implementation of the Guidelines, including exchange programmes and training among different communities, both within and across regions

Advocate that religious and traditional leaders take up HIV-related human rights concerns and become part of the implementation of the Guidelines

Support the development of a manual that would assist human rights and AIDS service organizations in advocating for the implementation of the Guidelines

Support the identification and funding of NGOs and ASOs at country level to coordinate a national NGO response to promote the Guidelines

Support, through technical and financial assistance, national and regional NGO networking initiatives on ethics, law and human rights to enable them to disseminate the Guidelines and advocate for their implementation

(i) States, through regional human rights mechanisms, should promote the dissemination and implementation of the Guidelines and their integration into the work of these bodies.

Commentary on Guideline 12

The United Nations bodies, agencies and programmes comprise some of the most effective and powerful forums through which States can exchange information and expertise on HIV-related human rights issues and build support among themselves to implement a rights-based response to HIV/AIDS. States, in their work with and governance of these bodies, can use these bodies as tools for promoting the Guidelines. States must, however, both encourage and enable these bodies through political and financial support, to take effective and sustained action in terms of promoting the Guidelines and must respond positively to the work done by these bodies with steps taken at the national level.

CONCLUSION

States are urged to implement these Guidelines in order to ensure respect for the human rights of those affected by HIV/AIDS and to ensure an effective and inclusive public health response to HIV/AIDS. These Guidelines are based on experience gained from best practice which has proven to be effective over the last 15 years. By implementing these Guidelines, States are able to avoid negative and coercive policies and practices which have had a devastating impact on people's lives and on national HIV/AIDS programmes.

The practical aspects of protecting HIV-related human rights are more likely to be addressed if there is leadership on this issue in the executive and legislative arms of Government and if multisectoral structures are established and maintained. Vital to any policy development and

implementation is the involvement of affected communities, together with relevant professionals and religious and community leaders, as equal partners in the process.

As national legislation provides a critical framework for the protection of HIV-related human rights, many of the Guidelines relate to the need for law reform. Another major instrument of social change is the provision of a supportive and enabling environment within which to conduct HIV-related prevention, care and support activities. Part of this enabling environment can be obtained by changing attitudes through general and targeted education, public information and education campaigns which deal with HIV-related rights, tolerance and inclusion. Another part of this enabling environment involves the empowerment of women and vulnerable groups to deal with HIV/AIDS by taking measures to improve their social and legal status and to assist them to mobilize their communities.

HIV/AIDS continues to challenge our societies in many ways. It requires States, communities and individuals to ask themselves extremely difficult questions, which have always been present in our societies, and to seek answers to these questions. With the advent of HIV/AIDS, we can no longer afford to avoid answering these questions because to do so threatens the lives of millions of men, women and children. These questions relate to the roles of women and men, the status of marginalized or illegal groups, the obligations of States concerning health expenditure and the role of law in achieving public health goals, the content of privacy between individuals and between individuals and their Governments, the responsibility and ability of people to protect themselves and others, as well as the relationship between human rights, health and life. These Guidelines are means to give guidance concerning these difficult questions, guidance which has evolved from the international human rights regime and from the courageous and inspiring work of millions the world over who have demonstrated that protecting the human rights of people means protecting their health, lives and happiness in a world with HIV/AIDS.

Appendix

HISTORY OF THE RECOGNITION OF THE IMPORTANCE OF HUMAN RIGHTS IN THE CONTEXT OF HIV/AIDS

For many years since the advent of HIV/AIDS, various intergovernmental, non-governmental and governmental bodies have recognized the important connection between the protection of human rights and effective responses to HIV/AIDS. Some of these are briefly described below.

The World Health Organization (WHO) held an International Consultation on Health Legislation and Ethics in the Fields of HIV/AIDS in April 1988 at Oslo. It advocated bringing down barriers between people who were infected and those who were not infected and placing actual barriers (e.g. condoms) between individuals and the virus. On 13 May 1988, the World Health Assembly passed resolution WHA41.24 entitled "Avoidance of discrimination in relation to HIV-infected people and people with AIDS", which underlined how vital respect for human rights was for the success of national AIDS prevention and control programmes and urged member States to avoid discriminatory action in the provision of services, employment and travel. Resolution WHA45.35 of 14 May 1992 recognized that there is no public health rationale for measures which arbitrarily limit individual rights, such as mandatory screening. In 1990, the World Health Organization conducted regional workshops on the legal and ethical aspects of HIV/AIDS at Seoul, Brazzaville and New Delhi. The first of these workshops developed guidelines to evaluate current and elaborate future legal measures for the control of HIV/AIDS to be used as a checklist by countries considering legal policy issues. 38/ In November 1991, the WHO Regional Office for Europe and the International Association of Rights and Humanity held a Pan-European Consultation on HIV/AIDS in the Context of Public Health and Human Rights in Prague, which considered the Rights and Humanity Declaration and Charter and developed a consensus statement (the Prague Statement). Three further consultations on HIV, law and law reform were convened during 1995 by the WHO Regional Office for Europe, for countries in Eastern Europe and Central Asia.

The United Nations Development Programme held Inter-Country Consultations on Ethics, Law and HIV in Cebu (Philippines) in May 1993 and in Dakar, in June 1994. 39/ Both of these consultations produced consensus documents reaffirming a commitment to voluntarism, ethics and the human rights of those affected (the Cebu Statement of Belief and the Dakar Declaration). UNDP also held Regional Training Workshops on HIV Law and Law Reform in Asia and the Pacific at Colombo, Beijing and Nadi (Fiji) in 1995.

Law reform programmes focusing on human rights have been ongoing in countries such as Australia, Canada, the United States, South Africa and in the Latin American region, together with networks of legal advocates,

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38/ See WHO document RS/90/GE/11(KOR).

39/ R. Glick (ed.), Inter-Country Consultation on Ethics, Law and HIV (Cebu), New Delhi, India, 1995; UNDP, Inter-Country Consultation on Ethics, Law and HIV (Dakar), Senegal, 1995.

practitioners and activists at governmental and community levels. One concrete achievement of such groups has been the successful lobbying for general anti-discrimination legislation at national and local levels which defines disability broadly and sensitively enough to explicitly include HIV/AIDS. Such civil legislation exists in the United States, the United Kingdom, Australia, New Zealand and Hong Kong. In France, such a definition is contained in the Penal Code. Some countries have constitutional guarantees of human rights with practical enforcement mechanisms, such as the Canadian Charter of Rights.

The United Nations General Assembly, in its resolutions 45/187 of 21 December 1990 and 46/203 of 20 December 1991, emphasized the need to counter discrimination and to respect human rights and recognized that discriminatory measures drove HIV/AIDS underground, making it more difficult to combat, rather than stopping its spread. The Special Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities on discrimination against HIV-infected people and people living with AIDS presented a series of reports to the Sub-Commission between 1990 and 1993. 40/ The Special Rapporteur's reports highlighted the need for education programmes to create a genuine climate of respect for human rights in order to eradicate discriminatory practices which are contrary to international law. The right to health can only be implemented by advising people of the means of prevention and the Special Rapporteur particularly noted the vulnerable situation of women and children in the spread of HIV. Since 1989, the Sub-Commission, at its annual sessions, has adopted resolutions on discrimination against people living with HIV/AIDS. 41/

The United Nations Commission on Human Rights, at its annual sessions since 1990, has also adopted numerous resolutions on human rights and HIV/AIDS which, inter alia, confirm that discrimination on the basis of HIV/AIDS status, actual or presumed, is prohibited by existing international human rights standards and clarify that the term "or other status" used in the non-discrimination clauses of such texts "should be interpreted to include health status, such as HIV/AIDS". 42/

There have also been prestigious academic international studies of HIV/AIDS and human rights, including by the late Paul Sieghart for the British Medical Association Foundation for AIDS; 43/ the Francois-Xavier Bagnoud Center for Health and Human Rights, Harvard School of Public Health; and the

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40/ E/CN.4/Sub.2/1990/9, E/CN.4/Sub.2/1991/10, E/CN.4/Sub.2/1992/10 and E/CN.4/Sub.2/1993/9.

41/ Sub-Commission resolutions and decisions 1989/17, 1990/118, 1991/109, 1992/108, 1993/31, 1994/29, 1995/21, 1996/33.

42/ Commission on Human Rights resolutions 1990/65, 1992/56, 1993/53, 1994/49, 1995/44 and 1996/43. Relevant reports of the Secretary-General submitted to the Commission on Human Rights are E/CN.4/1995/45 and E/CN.4/1996/44.

43/ P. Sieghart, op. cit.

International Federation of Red Cross and Red Crescent Societies; 44/ the National Advisory Committee on AIDS in Canada; 45/ the Pan-American Health Organization (PAHO); 46/ the Swiss Institute of Comparative Law; 47/ by the Danish Centre on Human Rights 48/ and by the Georgetown/John Hopkins University Program in Law and Public Health. 49/

Numerous charters and declarations which specifically or generally recognize the human rights of people living with HIV/AIDS have been adopted at national and international conferences and meetings, including the following:

London Declaration on AIDS Prevention, World Summit of Ministers of Health, 28 January 1988

Paris Declaration on Women, Children and AIDS, 30 March 1989

Recommendation on the Ethical Issues of HIV Infection in the Health Care and Social Settings, Committee of Ministers of the Council of Europe, Strasbourg, October 1989 (Rec. 89/14)

Council of Europe, Committee of Ministers, Recommendation R(87)25 to member States concerning a common European public health policy to fight AIDS, Strasbourg, 1987

European Union, European Parliament and Council Decisions on "Europe Against AIDS" programme (including dec. 91/317/EEC and dec. 1279/95/EC)

44/ International Federation of the Red Cross and Red Crescent Societies, AIDS, Health and Human Rights: An Explanatory Manual, Geneva, 1995. See, in particular, p. 43 on the Four-Step Impact Assessment of Public Health and Human Rights.

45/ HIV and Human Rights in Canada, submitted to the Minister of National Health and Welfare, January 1992.

46/ PAHO, Ethics and Law in the Study of AIDS, Scientific Publication No. 530, Washington, D.C., 1992.

47/ Swiss Institute of Comparative Law (Lausanne), Comparative Study on Discrimination of Persons Infected with HIV or Suffering from AIDS, Council of Europe, Steering Committee for Human Rights, CDDH (92) 14 Rev. Bil., Strasbourg, September 1992.

48/ Danish Centre on Human Rights, AIDS and Human Rights, Akademisk Forlag, Copenhagen, 1988.

49/ L. Gostin and Z. Lazzarini, Public Health and Human Rights in the HIV Pandemic, Oxford University Press, 1997.

Declaration of Basic Rights of Persons with HIV/AIDS, Organizing Committee of the Latin American Network of Community-Based Non-Governmental Organizations Fighting AIDS, November 1989

Declaration of the Rights of the People with HIV and AIDS, United Kingdom, 1991

Australian Declaration of the Rights of People with HIV/AIDS, National Association of People Living with HIV/AIDS, 1991

Prague Statement, Pan-European Consultation on HIV/AIDS in the Context of Public Health and Human Rights, November 1991

Rights and Humanity Declaration and Charter on HIV and AIDS, United Nations Commission on Human Rights, 1992 50/

South African AIDS Consortium Charter of Rights on AIDS and HIV, 1 December 1992

Cebu Statement of Belief, UNDP Inter-Country Consultations on Ethics, Law and HIV, the Philippines, May 1993

Dakar Declaration, UNDP Inter-Country Consultations on Ethics, Law and HIV, Senegal, July 1994

Phnom Penh Declaration on Women and Human Rights and the Challenge of HIV/AIDS, Cambodia, November 1994

Paris Declaration, World AIDS Summit, Paris, 1 December 1994

Malaysian AIDS Charter: Shared Rights, Shared Responsibilities, 1995

Chiang Mai Proposal on Human Rights and Policy for People with HIV/AIDS, submitted to the Royal Thai Government, September 1995

Asia-Pacific Council of AIDS Service Organization's Compact on Human Rights, September 1995

Montréal Manifesto of the Universal Rights and Needs of People Living with HIV Disease

Copenhagen Declaration on Social Development and Programme of Action of the World Summit for Social Development, March 1995

New Delhi Declaration and Action Plan on HIV/AIDS, Interdisciplinary International Conference: AIDS, Law and Humanity, December 1995

50/ United Nations document E/CN.4/1992/82, annex.

The formulation of the present Guidelines is a culmination of these international, regional and national activities and an attempt to draw on the best features of the documents described above, whilst also focusing on strategic action plans to implement them. It has been noted that, although some positive measures at the national level to promote and protect human rights in the context of HIV/AIDS are in place, a dramatic gap between professed policy and implementation on the ground exists. 51/ It is hoped that these Guidelines, as a practical tool for States in designing, coordinating and implementing their national HIV/AIDS policies and strategies, will assist in closing this gap between principles and practice and be instrumental in creating a rights-based and effective response to HIV/AIDS.

51/ See E/CN.4/1995/45 and E/CN.4/1996/44.

Annex II

AGENDA

1. Opening and welcome address.

2. Election of officers.

3. Adoption of the agenda. (HR/SEM.2/AIDS/1996/L.1).

4. Regional and international perspectives:

   (a) Asia: Alternative Law Research and Development Center (ALTERLAW) (HR/SEM.2/AIDS/1996/BP.1);

   (b) Africa: Network of African People Living with HIV/AIDS (NAP+) (HR/SEM.2/AIDS/1996/BP.5);

   (c) Latin America: Colectivo Sol (HR/SEM.2/AIDS/1996/BP.4);

   (d) Global: International Community of Women Living with HIV/AIDS (ICW+) (HR/SEM.2/AIDS/1996/BP.2);

   (e) Global: Global Network of People Living with HIV/AIDS (GNP+) (HR/SEM.2/AIDS/BP.3);

   (f) Global: Rights and Humanity.

5. Guidelines on HIV/AIDS and human rights (HR/SEM.2/AIDS/WP.1).

6. Follow-up and implementation of the guidelines on HIV/AIDS and human rights.

7. Adoption of the guidelines and of the recommendations of the Consultation.

8. Closing address.

Annex III

LIST OF PARTICIPANTS

Participants

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Others

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